

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,430

405

WILLIAM C. GALLOWAY,

v.

UNITED STATES OF AMERICA

Appeal from the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 4 1963

Joseph W. Stewart

CLERK

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JOINT APPENDIX

[Filed Nov. 19, 1962]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	Criminal No. 134-62
v.)	Grand Jury No. Orig.
WILLIAM C. GALLOWAY)	Vio. 22 D.C.C. 1301, 1410

STATEMENT OF DOCKET ENTRIES

1. Indictment for Vio. Title 22 DCC 1301, 1410; Filed Feb. 12, 1962.
 2. Arraignment -- May 4, 1962.
 3. Plea to indictment -- Defendant stands MUTE; Plea Not Guilty entered by Direction of Court May 4, 1962.
 4. Motion to withdraw plea of guilty denied -----
 5. Trial by jury -- June 20, 1962.
 6. Verdict or finding of guilt -- Guilty as Indicted -- June 21, 1962;
- McGARRAGHY, J.
7. Motion for Judgment of Acquittal GRANTED as to Ct. 2, 4, 6, July 13, 1962; SENTENCED to imprisonment for a period of 4 Months on Ct. 1, 4 Months on Ct. 3, 4 Months on Ct. 5; said Sentence by the Counts to run CONSECUTIVELY, ENTERED July 13, 1962; JUDGMENT & COMMITMENT, FILED July 13, 1962.
 8. APPEAL NOTED -- October 10, 1962; Certified Copy of Order from the U.S. Court of Appeals dated 10-5-62 ALLOWING Defendant to prosecute Appeal without prepayment of costs and for Stenographic Transcript of Trial proceedings and 5-25-62 proceedings, filed -- 10-10-62.

* Praecipe withdrawing S.
David Rubenstein as Counsel
to defend, APPROVED, FILED
7-18-62

Attest HARRY M. HULL, Clerk
By: /s/ Helen Brosnan
Deputy Clerk

[Filed in Open Court
Feb. 12, 1962]

[INDICTMENT]

The Grand Jury charges:

On or about May 21, 1961, within the District of Columbia, William C. Galloway did obtain lodging, food and accommodations of the value of \$64.91 at The Burlington Apartment House Company, a body corporate, an inn, boarding house and lodging house without paying therefor, with intent to defraud the proprietor and manager thereof.

SECOND COUNT:

On or about May 21, 1961, within the District of Columbia, William C. Galloway did make, draw, utter and deliver to Hubert T. Moore a certain paper writing in the form of a check written on The Equitable Trust Company, Baltimore, Maryland, in the amount of \$64.91, knowing at the time of such making, drawing, uttering and delivery of said check that he did not have sufficient funds or credit with said bank or other depository for payment of such check in full upon its presentation. Following is a photostatic copy of said check:

May 21, 1961

NO. _____

The Equitable Trust Company,
Baltimore, Md.

Pay to the order of Burlington Hotel \$64.91
Sixty Four and no/100 ----- Dollars
/s/ W. C. Galloway

THIRD COUNT:

On or about May 19, 1961, within the District of Columbia, William C. Galloway did obtain lodging, food and accommodations of the value of \$133.16 at The Burlington Apartment House Company, a body corporate, an inn boarding house and lodging house without paying therefor, with intent to defraud the proprietor and manager thereof.

FOURTH COUNT:

On or about May 19, 1961, within the District of Columbia, William C. Galloway did make, draw, utter and deliver to Hubert T. Moore a certain paper writing in the form of a check written on The Equitable Trust Company, Baltimore, Maryland, in the amount of \$133.16, knowing at the time of such making, drawing uttering and delivery of said check that he did not have sufficient funds or credit with said bank or other depository for payment of such check in full upon its presentation. Following is a photostatic copy of said check:

May 19, 1961

NO. _____

The Equitable Trust Company,
Baltimore, Md.

Pay to the order of Burlington Hotel \$133.16/100
One hundred thirty-three and 16/100 ----- Dollars

327-28-29B

/s/ W. C. Galloway

FIFTH COUNT:

On or about May 31, 1961, within the District of Columbia, William C. Galloway did obtain lodging, food and accommodations of the value of

\$492.96 at the Hilton Hotels Corporation, a body corporate, an inn, boarding house and lodging house without paying therefor, with intent to defraud the proprietor and manager thereof.

SIXTH COUNT:

On or about May 31, 1961, within the District of Columbia, William C. Galloway did make, draw, utter and deliver to Joice Foisy a certain paper writing in the form of a check written on The First National Bank of Cookeville, Cookeville, Tennessee, knowing at the time of such making, drawing, uttering and delivery of said check that he did not have sufficient funds or credit with said bank or other depository for payment of such check in full upon its presentation. Following is a photostatic copy of said check:

772 No. Folio D73665	<u>N</u> $\frac{15}{3}$ P	12400
		Date <u>May 31, 1961</u>

Name of Bank First National Bank of Cookeville

City _____

Branch _____ & State Cookeville, Tenn.

Pay to Order of Statler Hilton Hotel \$492.96

Four Hundred and Ninety two and 96/100 DOLLARS

Address:

Street 615 W. Spring St. Signature /s/ W. C. Galloway

City & Cookeville, Tenn.

State Cookeville, Tenn.

327-28-29

For value received I represent that the above amount is on deposit in said bank in my name, subject to this check and is hereby assigned to payee or holders thereof.

A TRUE BILL:

/s/ Edward R. Gray
* * * Foreman

/s/ David C. Acheson
Attorney of the United States in
and for the District of Columbia

February 16, 1962.

Honorable Alfred A. Arraj,
Chief Judge, United States District Court,
Denver, Colorado.

Dear Judge Arraj:

RE: Indictment - Criminal No. 134-62
District of Columbia. -William C.
Galloway.

The above defendant appeared before me today un-
der the above indictment.

From his previous appearances before me on De-
cember 29, 1961, and January 2, 1962, I am convinced
that the defendant is the person named in the above indict-
ment. I recommend, therefore, that he be removed to the
District of Columbia where the charge is pending.

Yours very truly,

/s/HAROLD S. OAKES
U. S. Commissioner

[Filed April 23, 1962]

WARRANT FOR ARREST OF DEFENDANT

To: ANY UNITED STATES MARSHAL OR ANY OTHER AUTH-
ORIZED OFFICER

You are hereby commanded to arrest William C. Galloway and bring
him forthwith before the United States District Court for the District of
Columbia in the city of Wash., D.C. to answer to an INDICTMENT charg-
ing him with Obtaining lodging, food and accomodations with intent to de-
fraud proprietor and manager; Uttering a check on a bank, knowing he did
not have sufficient funds with said bank in violation of Sections 1301, 1410,
Title 22, D. C. Code.

Dated at Wash., D.C.

on February 16, 1962

* * *

HARRY M. HULL, Clerk

By: /s/ H. G. Dodd
Deputy Clerk

RETURN

District of Colorado ss

Received the within warrant the 19th day of February, 1962 and executed same by arresting the within named defendant on information that this warrant was outstanding.

W. H. Terrill -US Marshal

By: /s/ Ray E. Keech
Deputy

[Filed April 23, 1962]

UNITED STATES COMMISSIONER
DISTRICT OF COLORADO

RECORD OF PROCEEDINGS IN CRIMINAL CASES

COMMISSIONER'S)	Complaint filed on Dec. 21, 1961, by
Docket No. 27 Case No. 303)	Walter E. Grove, Official title Det.
THE UNITED STATES)	Sgt. Check Sqd MPDC, charging violation of DCC Code, Title 22, Section
vs.)	1301, on May 31, 1961, at Washington
William Charles Galloway)	in the division of the district of Columbia as follows: by false pretenses obtaining lodgings and related services.
aka W. C. Galloway)	

WARRANTS OR SUMMONS ISSUED:

* * * * *

Substance of return -- Dec 27, 1961 Deft arrested at Grand Junction,
Colorado

* * * * *

PROCEEDINGS ON FIRST PRESENTATION OF ACCUSED TO COMMISSIONER:

Date -- Dec 27, 1961 Arrested by Lawrence D. Billis, Deputy
Marshal on warrant of Sam Wertleb.

Appearances -- for United States * * * for accused, Dwight D.
Murphrey, Denver Colo.

Proceedings taken -- Dec 29, 1961 Deft brought before me on warrant issued Dec 21, 1961 in the District of Columbia. Deft informed

of Complaint, right to retain counsel and preliminary hearing. Deft requested continuance to Jan 2, 1962 to consult counsel and continued to 10 Jan 2, 1962. On Jan 2, 1962 Deft had not consulted counsel and Court appointed counsel. Jan 10, 1962 Court entered order for stay of proceedings before Commissioner. Feb 5, 1962 Counsel for Deft requested hearing to establish probable cause and hearing set for Feb 19, 1962 at 2:00 P.M.

Outcome -- Held for preliminary hearing.

Bail fixed -- Dec. 29, 1961. Amount, \$2,500.00. * * * * justified by affidavit dated * * * [or] committed to Denver County Jail on Dec 29, 1961.

* * * * *

Proceedings taken -- Feb 16, 1962 Complaint superseded by Indictment returned Feb 12, 1962.

Warrant with Marshal's return filed by U. S. Attorney as exhibit on appeal by Deft to 10th Circuit Court of Appeals.

* * * * *

Made this 28th day of February, 1962.

Transmitted to Clerk of United States District Court for the District of Columbia, Feb 28, 1962.

/s/ Harold S. Oakes
United States Commissioner

[Filed Nov. 19, 1962]

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

- - - - - X

UNITED STATES OF AMERICA

-against-

Criminal No. 19880

WILLIAM CHARLES GALLOWAY,

Defendant.

- - - - - X

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

U. S. Post Office Building,
Denver, Colorado

Mon. & Tues., Feb. 19 & 20, 1962

Before: Hon. WILLIAM E. DOYLE,
United States District Judge.

* * * * *

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HAROLD S. OAKES

called as a witness by the Government, having been duly sworn, testified as follows:

MR. MURPHEY: I believe it might be well to state my position as to Mr. Oakes' testimony at this point, rather than interrupt in the questions and answers as they are made.

THE COURT: Very well.

MR. MURPHEY: I have objected on two grounds, really, to the hearing last Friday, on the question of identity. One of them is that Federal Rule 40-B-3 provides for a procedure whereby either you can have the first hearing on identify before the Judge and he determines the whole matter, or you have a hearing before the Commissioner and he makes a

78 report, and then the case of United States v. Yarborough says he prepares a narrative of witnesses and what they said and of the evidence and reports that, plus his recommendations, to the Judge. And then the Judge determines the sufficiency of that report.

Now, I have made my motion on the basis that his report -- this

letter to Judge Arraj -- is absolutely insufficient, I have also gone behind that to the extent of filing an affidavit stating that there was no evidence taken at the hearing and that bears on the question of identity. It bears on the question of due process of law.

I don't feel that the Commissioner ought to properly under proper proceedings to be able to supplement in a second hearing on identity what should be done in the first hearing on identity, since the Government elected to follow this two-hearing procedure of a hearing before the Commissioner and then a review by the Judge.

He had his opportunity last Friday. We were both noticed in for it, in the sense that the United States Attorney's office knew that this hearing was going to be held. We knew about it for approximately ten days. We prepared for it. We had everybody present for it at the time -- last

79 Friday. I was prepared at that time to make whatever moves I needed to protect my client. And they didn't present anything on the question of identity at that time.

THE COURT: I think we will note your objection, and reserve a ruling on it. This is a reiteration, Mr. Murphey, of what you said.

MR. MURPHEY: I don't want to have to interrupt his testimony at every stage, to make --

THE COURT: We will note your general objection upon the grounds indicated and reserve a ruling.

MR. FINE: Just one comment. We didn't elect this present stage of the multi-stage proceeding. That's --

MR. MURPHEY: How didn't you elect?

MR. FINE: Mr. Murphey has sought to have this matter reviewed in the court, which we are in the process of doing.

MR. MURPHEY: Your Honor, in the ordinary course of affairs there would be a review in this court under the amplification, by the letter. What we are trying to do is speed the matter up so we can have it disposed of.

THE COURT: Proceed.

DIRECT EXAMINATION

BY MR. FINE:

Q. Will you state your name, please? A. Harold S. Oakes.

Q. Mr. Oakes, do you hold an official position with the United States Government? A. Yes, I am the United States Commissioner at Denver.

Q. Do you recognize the gentleman in the dark windbreaker jacket, seated at the table? A. Yes, I do.

Q. Have you had occasion in your official duties to conduct proceedings in which this gentleman was involved? A. I have.

Q. Would you in your own words describe from the first time you saw this individual, what those proceedings were? A. He first appeared before me on December 29, 1961.

MR. MURPHEY: I am going to have to object at this point, on a different ground from the one I stated generally. That is, if he is going to testify today at all, his testimony should be strictly limited -- and even that may be objectionable -- but should be strictly limited to what he took

81 as evidence in the hearing on Friday. He should not be able to go back to other hearings, not connected with the question of identity.

I had no right to cross-examine Friday in connection with previous matters. He didn't call himself as a witness --

THE COURT: The ruling is that the testimony will be received provisionally and that the objection at this time will be overruled.

BY MR. FINE:

Q. Will you continue? A. Where was I?

He first appeared before me on December 29, 1961, on a complaint issued in Washington, District of Columbia, on December 21, 1961, charging him with a violation of Title 22, Section 1301, District of Columbia Code, which covered an offense by false pretenses, obtaining lodgings and related services, and referring specifically to a check which defendant was alleged to have given the Statler Hilton Hotel in Washington, D. C.

MR. FINE: To expedite, these documents are in the Court's file --

MR. MURPHEY: We will have to object to the last statement of the witness, in the sense that it assumes all the way through before any

proof by him or anybody else, that the charges were against this defendant. And is thoroughly improper. There is a charge against William C. Galloway.

THE WITNESS: If Your Honor please, when the defendant appeared before me under this complaint that was issued against William Charles Galloway, also known as W. C. Galloway, the first thing I did was to inquire was he William Charles Galloway, to which he gave an affirmative answer.

I informed him of his right to hearing, right to counsel, and the usual procedure. The defendant requested the continuance of the matter, so that he could engage counsel and have advice as to what he should do. I also informed him of his right to request transfer to this District Court under Rule 20, so I continued the matter until January 2.

BY MR. FINE:

Q. Before we move on, may I ask you this: Was a copy of the complaint shown to the defendant at the hearing? A. It was read to him.

Q. I see. A. I had only the original of the complaint, which is part
83 of my file, so the defendant was not furnished with the complaint, but it was, as I say, read to him.

Q. Go ahead. A. So I continued the case until January 2, 1962, at 2:00 o'clock, at which time the defendant appeared before me, informed me that he had not been able to consult counsel.

So I had a conference with Judge Arraj, and told him the circumstances, and Judge Arraj suggested that probably the defendant was not able to engage counsel and he felt that under the provisions of Rule 20, he could appoint counsel to represent the defendant. And the next I heard was that --

Q. Let me interrupt again, Mr. Oakes. Was the man who appeared before you on January 2, 1962, the same individual as was before you on the 29th of December, 1961? A. Yes.

Then I did not see the defendant again until last Friday.

In the meantime, Mr. Murphey delivered me a certified copy of the order of Court stopping any proceedings before me until the motions in

84 the District Court were disposed of.

And on -- well, then on the 5th of February I was out of the city for several weeks. Mr. Murphey told me that his application for a motion for reduction of bond had been reduced -- or had not been reduced, and he desired a hearing for the defendant before me to establish probable cause.

Considering the fact that the complaint was filed in Washington, D. C., I set the case for hearing before me on February 16, last Friday.

Then later, before the 16th, by the 16th, I was informed by the United States Attorney's office that an indictment had been returned against on William C. Galloway.

So on Friday, February 16, the man seated at the table over here appeared before me. My first question addressed to him was whether he was William C. Galloway. At which point he was mute. And then at which point Mr. Murphey argued about the identification, and Mr. Henry was there also.

Inasmuch as the man sitting at the table over here had appeared before me and had acknowledged his identity as William Charles Galloway, also known as W. C. Galloway, and that the complaint upon which he 85 appeared before me, this check at the Statler Hilton Hotel, was one of the counts which was included in the indictment, I felt it within my province to find that the man sitting at that table was William C. Galloway, who was named in the indictment returned in the Washington -- in the District of Columbia.

Q. And, Mr. Oakes, did you, on February 16, 1962, address a letter to Judge Arraj relating to this matter? A. I did.

Q. And in that, did you state that, make this statement, "From his previous appearances before me, on December 29, 1961, and on January 2, 1962, I am convinced that the defendant is the person named in the above indictment"? A. I did.

Q. And was that statement made on the basis of the facts which you have narrated on the witness stand just now? A. Yes, it was.

MR. FINE: I have no further questions, Your Honor.

86 MR. MURPHEY: By exercising my right of cross-examination at this time, I certainly wish not to waive the objections which I have previously made to the Court. However, he, having testified, I feel it is necessary to cross-examine him.

THE COURT: Very well.

CROSS EXAMINATION

BY MR. MURPHEY:

Q. Mr. Oakes, may I ask you at this time whether the letter to Judge Arraj which you wrote to him dated February 16, 1962, is the only report you have made to the Court as to the February 16 hearing?

A. Yes, that's all that is required under Rule 40, in my opinion.

Q. And that is your application to the Court for removal under Rule 40? A. That's right.

Q. And that is the paper you intend to serve as your application? A. Correct.

Q. I would ask you, Mr. Oakes, whether last Friday, calling your attention to the meeting together at 2:00 p.m., in the United States Commissioner's office, whether at that hearing you took any evidence in terms of calling any witnesses as to the identity of the defendant -- did you call any witnesses? A. No.

87 Q. I would ask you whether you took the stand yourself and testified at that hearing as to events occurring on December 29, 1961, in your presence -- did you testify at the hearing on February 16 as to that? A. May I have that question again?

Q. I would repeat it this way, Mr. Oakes: Did you at the hearing on February 16, 1962, in the United States Commissioner's office, place yourself on the stand or any other person on the stand and obtain testimony as to what occurred or what was said between you and Mr. Galloway on December 29, 1961, in connection with Mr. Galloway's testimony?

A. No.

Q. You did not. Did the defendant or his attorney -- myself -- have any cross-examination of any witnesses as to what took place on December 29, that cross-examination taking place or not taking place in the

hearing on February 16? A. I don't quite follow you, Mr. Murphey. I thought we were discussing what happened last Friday.

Q. Right. Last Friday, at our hearing together last Friday. A. Yes.

88 Q. -- did I or the defendant have an opportunity to cross-examine any witness as to what took place between you and the defendant on December 29? A. That wasn't before me. The only question was the question of the indictment. No, the answer to that question is no.

Q. It is your feeling that the only question that was before you last Friday was a question of the indictment? A. Well, let's put it this way. Under the indictment, there were two questions, two matters before me: One, the identity of the defendant as the man named in the indictment, and the other was the setting of bond.

Q. One further question, and that is, whether or not you have taken at any time any testimony from any person or of any documentary evidence or any other evidence to show that a William C. Galloway present in this city and incarcerated in the County Jail here, which you assumed to be the defendant sitting at the table, whether or not that William C. Galloway, in your opinion, is the same William C. Galloway as was charged in Washington, D. C., under the indictment or it was not some other William C. Galloway? A. I think I explained that, that the indictment that was before me

89 included in one count, the matter that was before me on the complaint that had theretofore been filed, and under which the man sitting here was identified as -- or acknowledged his identity as William Charles Galloway, also known as W. C. Galloway.

Q. I believe you misunderstood my question. A. Okay.

Q. What I am getting at here, and what I would ask you about is, whether you have ever taken any evidence whatsoever to determine that the man you considered to be William C. Galloway and who you said admitted being Mr. William C. Galloway on December 29, whether that Mr. William C. Galloway is the same Mr. William C. Galloway who is charged in Washington, D. C. -- assume, for example, that he is William C. Galloway -- have you ever taken any evidence that that William C. Galloway is

the same one that is charged in this indictment? A. No, I took that as a matter of my personal opinion.

MR. MURPHEY: I have no further questions on that point. * * *

* * * * *

112 THE COURT: Did you find any law on this other issue as to sufficiency of proof --

MR. MURPHEY: Yes, Your Honor, I have.

THE COURT: -- in the face of standing mute?

MR. MURPHEY: That breaks down into two parts, as I found law on the subject. Here again I didn't find specific law where a man is brought under a Rule 5, to be told that anything he says may be used against him. And he has a right to counsel and before he is told those things he is asked a question and he allegedly makes an admission at that hearing. I didn't find that particular fact situation, on all fours, but it breaks down into two parts.

We have Rule 5-B of the Federal Rules of Criminal Procedure, and this is one of the rules which Your Honor referred to yesterday when you talked with me about the safeguards which exist in the Federal Courts. It is one of the rules which is a safeguarding rule. It provides that the Commissioner shall inform the defendant of the complaint against him, of his right to retain counsel, and of his right to have a preliminary ex-

113 amination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him.

He has to inform him of all those things.

We have the question of whether or not you can use that type of hearing which is for the purposes of informing the man of his right and that he doesn't have to make a statement, whether you can use that hearing as an entrapping basis to ask him right before you tell him he doesn't have to make a statement, a question of a material issue and try to get an answer out of him. If he answers the thing, then you use it later. That certainly is contrary to the protective nature of this statute, and certainly very much opposed to the spirit of the thing, and I should imagine according

to any reasonable interpretation of Rule 5-B.

A leading case on this subject is United States v. Haupt, which is a 1943 case -- 136 Fed. 2d. 661. It is referred to on page 2 of my brief, the next to the last paragraph.

In this case a number of agents testified as to oral statements made by the defendants after they had been taken into custody. The Court referred to Title 5, U.S.C.A., Section 300-A, which provided that the person arrested shall be immediately taken before a committing officer. The defendants' admission had been made before this had been done. The Court held that there is no escape from the conclusion that the statements admitted in the instant case were improper. It stated that it's reason for denying the admissibility of the admission was bottomed solely on the premise of the arresting officers' non-observance of the statutory command.

That, of course, is not on all fours, but it has to do with statements made before they told him that, before they took him before this committing magistrate, and it is certainly an analogous situation where you do take him and before making that statement you get information which is on a material issue.

We have United States v. Hoffman, which is also a 1943 case, and after citing several cases, the Court stated:

"These cases appear to make it clear that even the voluntary character of statements prior to arraignment does not make them admissible."

Then the Court referred to the Proposed Federal Rules of Criminal Procedure, Rule 5, and Committee Note thereto.

The Court held inadmissible a statement made, pointing out that the fact that the Commissioner allowed the release on moderate bail and that he was still in detention when even the later statements were given suggest that all preceded the arraignment.

* * * * *

125 MR. MURPHEY: I think, Your Honor, you need some evidence, at least some evidence, and it has to be -- I sometimes say sufficient evidence -- but it is in terms of the particular type of proceeding involved.

THE COURT: Well, I am going to allow Mr. Henry to proceed to produce the additional evidence. I might say at this time there is no doubt in my own mind as to the identity of the accused. I think that what happened before the Commissioner on the occasion of the first hearing looms as substantial in this evaluation here. In other words, I don't have a suspicion that he is not the man, from what I have heard. I am satisfied in my own mind. Nevertheless, for the purposes of the record, I think the District Attorney wants to supplement it. In that connection, I don't want to hear anything as to lawyers' talk or negotiations -- I don't think that would be proper.

On the other hand, you indicated that you had some other --

126 MR. HENRY: I do, Your Honor.

THE COURT: Very well.

MR. HENRY: In the first place, I would like to state the position of the Government that at the present time there is actually no adversary proceeding before Your Honor. There's been no issue joined, if you please. We have stated that we have relied on the report of the Commissioner that there be identity shown. There's been nothing whatsoever, no statements that he in truth is not the man. So I submit to Your Honor there is no issue joined and that there should be no necessity of our going forward.

However, we --

THE COURT: I understand.

MR. HENRY: We have the additional testimony which I think is valid, and at this time I would like to have Lawrence Billis sworn.

MR. MURPHEY: I, of course, make my objection to the calling of any further evidence and Your Honor understands my position. I hope not to have to interrupt him on that basis.

THE COURT: Your objection is noted now, and will be overruled. And it is upon the basis, so the record will be clear, that Rule 40 does not rule out successive stages of proceedings, and as I read it, the Court has got the jurisdiction to hear this thing in its entirety, if it wishes. So I

127 suppose it could hear a part of it, and as I see it, I think that the duty of the Court is to satisfy itself finally that it is not removing the

wrong man, and not to insure that the hearings be in particular order or be set in particular levels, or that the proof be presented in a particular manner. I think that this is an obligation, to see to it that the man is correctly identified.

MR. MURPHEY: We would wish to save our objection and exception.

LAWRENCE D. BILLIS

called as a witness in behalf of the Government, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HENRY:

Q. Will you state your name? A. Lawrence D. Billis.

Q. And your occupation? A. Deputy United States Marshal.

Q. Were you in such a capacity on or about December 27, 1961?

A. Yes, I was.

Q. Did you have occasion upon that date -- or on or about that date -- to serve a warrant upon one known to you as William Charles Galloway, also known as W. C. Galloway?

128 MR. MURPHEY: I object to the leading form of this question.

THE COURT: Overruled.

[THE WITNESS]: I did.

MR. HENRY: May the witness be seated?

THE COURT: Surely.

[BY MR. HENRY:]

Q. Will you state the circumstances of serving such a warrant?

A. I arrived in Grant Junction approximately December 28, and approximately 8:00 o'clock in the morning, or 8:30, I arrived at the Grand Junction County Jail.

I informed the deputies there that I had a warrant for a William C. Galloway. One of the jailers then went upstairs and called for a William Galloway, who came to the bars, and the jailer asked him to get ready, that the Marshal was here to pick him up and take him to Denver.

He objected at that time to the jailer and said that he would like to speak to the Marshal.

So I then went upstairs, identified myself, asked him if he's William Galloway, presented him with the warrant and complaint which he read. And he said, "That's all I wanted to know."

129 So he says, "Just a minute. I will get my stuff."

So he went back to the cell, picked up his belongings, and we left the County Jail.

MR. HENRY: Excuse me, would the reporter please mark this?

(Paper marked Government's Exhibit 1 for Identification.)

Q. [By Mr. Henry] I hand you what has been identified as Government's Exhibit 1. Will you state to His Honor whether or not you can identify same? A. Yes.

Q. What is it?

MR. MURPHEY: I object at this time to the --

MR. HENRY: I haven't offered it.

MR. MURPHEY: All right.

[THE WITNESS:] This is a Commissioner's Warrant of Arrest, United States v. William Charles Galloway, also known as W. C. Galloway. This warrant was executed by me on December 28, 1961.

Q. [By Mr. Henry] Do you see the person in this room upon whom that warrant was executed? A. I do.

Q. Where is he? A. He is seated two chairs on my left.

130 Q. Is this the man concerning whom you said you had these other conversations? A. Yes, sir.

MR. HENRY: I offer at this time Government's Exhibit 1.

MR. MURPHEY: We object to the admission into evidence of Government's Exhibit 1, on the grounds previously stated that none of this evidence is proper as to taking at this time.

THE COURT: Very well. Objection will be overruled and Exhibit 1 will be received in evidence.

MR. MURPHEY: Exception.

[BY MR. HENRY:]

Q. Did you or did you not read to the individual whom you have identified as being Mr. Galloway, and is present in this room, that warrant on

that day? A. I read the warrant to him and he also read it himself.

Q. You observed him reading it, is that correct? A. Yes, sir.

Q. Now, relate in narrative form what occurred between you and Mr. Galloway concerning his transportation to Denver and any conversation that occurred between you and him. A. We left at approximately 8:45, and I believe we arrived back in Denver around 6:00 o'clock or 7:00
131 o'clock. Anyway, it was a period of eight or nine hours on the road.

During that time, there was a number of conversations that we had -- in fact, he did all the talking and I did the listening. He mentioned the fact that one of the deputy sheriffs over there in Grand Junction was trying to railroad him on all these charges and that he was giving him a bad time.

He also stated that a couple of charges, statutory charges that he had pled guilty to in Grand Junction there were checks written by his wife at the time he was incarcerated in the County Jail.

He also stated that as soon as he was through with all these court proceedings and everything he would, one of these days, return to Grand Junction with a raft of attorneys and he would bury all these deputy sheriffs over there -- and including the sheriff and undersheriffs.

On our return, he mentioned a number of these checks that he had written, and he also mentioned the objecting question here, and he stated to me that this check, he says that he didn't feel bad about this check, because he understood -- or he felt that Mr. --

Q. How did he describe that check? A. He said, "This check in Washington" -- he says, "I don't feel bad about it, Mr. Billis, because

132 Mr. Hilton has a damn sight more money than I have."

THE DEFENDANT: May I say something to this Court, please?

THE COURT: Just a moment. Just wait a minute.

THE DEFENDANT: Thank you, sir.

MR. HENRY: May I see the Exhibit, if Your Honor please?

(Handed to Mr. Henry).

Q. [By Mr. Henry] You were saying he related the fact that he did not have any qualms about having written a check to the Hilton Hotel

because Mr. Hilton had a great deal more money than he? A. He said this check --

Q. Did he use the term, "Mr. Hilton," or "the Hilton"? A. He said, "Mr. Hilton has a damn sight more money than I."

MR. HENRY: No further questions.

MR. MURPHEY: May I have an opportunity to speak with my client?

THE COURT: Yes, indeed.

Let's see. Couldn't the Marshal take him out in the law clerk's office and give him a little room? So that you can go right out in there.

133 MR. MURPHEY: All right.

(Conference between defendant and counsel, with the Deputy Marshal present, in the adjoining room.)

MR. MURPHEY: We have certain questions we want to ask Mr. Billis on cross-examination.

CROSS EXAMINATION

BY MR. MURPHEY:

Q. First, I would like to ask you whether at the time you went to the jail in Grand Junction, as you testified, whether or not Mr. Galloway did not at that time refuse to leave the jail with you? A. No, he didn't refuse me.

Q. He didn't refuse to leave the jail with you? A. Not me.

Q. Did he do it to anybody? Did he refuse -- to anybody -- to leave the jail? A. He might have to the jailers, but to me he didn't.

Q. You don't know, then, the entire picture as to just what he did or did not refuse to do at that time? A. To the jailers, I don't, because I wasn't up there at that time.

Q. Did you tell him that he had no choice but to go with you?

134 A. I certainly did.

Q. Why did you tell him? A. Because I had a warrant for his arrest.

Q. Did that come up in the conversation, that he had no choice?

MR. HENRY: I object. I don't think it makes any difference.

THE COURT: Overruled.

[BY MR. MURPHEY:]

(Question read by the reporter.)

A. It seems to me he said he had been -- something about this same thing had been dismissed, or something. And to my knowledge, it had never been dismissed. This was the warrant I had.

Q. And that was the basis upon which this came up in conversation?

A. I believe so.

Q. He stated to you that in his opinion this had been dismissed, that he didn't need to go for that purpose? A. I believe that was it.

Q. Did he tell you at that time that he was not guilty of the charge?

A. No, he didn't.

Q. You don't recall any such thing? A. No.

135 Q. Did he ask you why he could not be taken before the United States Commissioner in Grand Junction? A. Coming back, he mentioned something about that.

Q. But he didn't tell you that at all or ask you that question at all in Grand Junction before you took him out of the jail? A. Not before we started.

Q. And you never made a statement to him that you "could take him wherever we wanted to, to the United States Commissioner"? A. No, I didn't.

Q. You made no such statement. Now, did Mr. Galloway make any statement to you at that time in Grand Junction that he felt that the charges against him were due to political influence in Grand Junction? A. Yes, he certainly did.

Q. Did he indicate that he felt that people were trying to keep him out of business, from going into business in Grand Junction, that there was animosity against him for that reason? A. Yes.

Q. He indicated that to you? A. Yes.

136 Q. Did he indicate he had been held -- that he had been charged in August of 1961 upon a charge arising out of the Statler Hilton allegations?

A. I believe he did.

Q. Now, when you brought the defendant to the Denver County Jail,

do you remember having seen at that time the receiving sergeant, Mr. Harvey Fisher, at the Denver County Jail? A. No, I took him down to the City Jail; we placed him in the City Jail.

Q. Did you ever take a warrant of removal out to the Denver County Jail for Mr. Galloway -- alleged Mr. Galloway -- to sign? A. It seems to me that we had some type of paper for him to sign.

Q. Did you go to the Denver County Jail in connection with some type of paper? A. Yes, I believe so. We have them quite frequently.

Q. At that time when you took the paper out to the defendant, did you see a Sergeant Harvey Fisher at the Denver County Jail, the receiving sergeant there? A. He's -- as a rule he's always out there.

137 Q. Did you make any statement to Sergeant Harvey Fisher at that time? Did you indicate to Mr. Fisher that you hoped they hang him, "We're going to take you" -- did you make the statement, "We're going to take you whether you sign it or not? I hope they hang him."

MR. HENRY: Objection, as having nothing to do with the issues involved.

MR. MURPHEY: It has to do with the business of this witness and reflects upon his credibility.

THE COURT: Very well, he may answer.

[THE WITNESS:] I don't recall anything like that. I may have said some type of remark at the time, but I don't recall what it would have been.

Q. [By Mr. Murphey] Did you make a remark anywhere along the lines that I have indicated here in this question? A. I might possibly have said something like that at one time.

Q. Why might you have said something like that at one time? A. If I did, it would have been the conversation between the guards and I out there.

Q. That's what I am asking you about, the conversation. A. I don't recall any conversations like that, no.

138 Q. Do you feel that you don't recall? And yet you indicated to us that perhaps you might have done so? A. There's a possibility.

MR. MURPHEY: We have no further questions, Your Honor.

MR. HENRY: We have no further testimony, Your Honor.

THE COURT: Very well. That's all.

(The witness, Mr. Billis, excused).

MR. MURPHEY: The defendant has indicated previously that he would like to make a statement. I feel that it would certainly be beneficial to the Court to permit him to make a statement, yet we have had a holding by Your Honor --

THE COURT: I will reverse that and he can make a statement without being subjected to cross-examination as to whether he is the man.

It ought to be through you. I am not going to let him make any speech.

(To the defendant) You are represented by counsel, and very, very competent counsel, by the way.

THE DEFENDANT: I am exceptionally grateful to him, Your Honor.

139 THE COURT: We are not going to let you represent yourself.

THE DEFENDANT: I have no intention of trying that.

THE COURT: If your own counsel wants to ask you some questions under oath, you will be sworn and the Court will hear you.

MR. MURPHEY: Yes, Your Honor. And I might state for the record, in order to preserve his right against self-incrimination under the Fifth Amendment, I believe we should indicate that we do not for purposes of the Fifth Amendment waive any rights by his taking the stand on this preliminary matter. Because it does not deal with the merits, but deals with the question of the preliminary matters, as to any admissions as to identity.

THE COURT: If he makes a positive assertion that he is not the man, why, that would make a difference as to the rights to cross-examination.

MR. MURPHEY: Yes, Your Honor.

THE COURT: It would open up the whole subject and the District Attorney would have the right to go into everything.

MR. MURPHEY: Yes.

THE COURT: You understand that?

140 MR. MURPHEY: That would certainly be true.

THE COURT: Very well, swear the defendant.

(To the defendant) You will rise and be sworn.

WILLIAM CHARLES GALLOWAY

the defendant, called as a witness in his own behalf, having been duly sworn, testified as follows:

DIRECT EXAMINATION**BY MR. MURPHEY:**

Q. Sir, are you the gentleman who has been held in the Grand Junction Jail, or was held in the Grand Junction Jail in August of this year -- Grand Junction, Colorado? A. Yes, I am.

Q. At the time you were held in the Grand Junction Jail, were you shown any papers dealing with a charge arising out of an alleged forged check to the Statler Hilton Hotel in Washington, D. C.? A. Yes, I was.

Q. Would you indicate to the Court -- or tell the Court -- the nature of those papers? A. I know very little about legal papers, or their contents. But Sheriff Raymond Reese, in August, approximately the 18th of August, brought to me a list -- a paper that stated that I had -- was

141 supposed to have given the Hotel Hilton in Washington, D. C., a check in payment for a hotel bill.

At that time I told Mr. Reese that this was not me, that I had not done this.

Q. Did you write a letter to a Judge in Grand Junction? A. I did. I wrote a letter to Judge Ed Dutcher and requested that he have the Sheriff of Mesa County bring this into his court because the Sheriff was holding me on this; this was the only charge at the time he had to hold me.

The letter never reached the Court, the first one.

Q. Did you subsequently write a second letter? A. I did.

Q. Would you tell the Court as to the second letter and the circumstances in which it reached the Court? A. The second letter reached the Court and the -- when the second letter reached the Court, the first one reached the Court, which was 15 days later.

Q. They both reached the Court at the same time? A. The same day. The Court is approximately 100 yards from the jail.

142 Q. Would you indicate to His Honor what happened subsequently in this connection? A. The District Court Judge, Dutcher, sent a J. P.

Court Judge over to the jail to inform me that there was no charged filed in his court against me, and refused to allow me to come to his court. He said that the Sheriff could hold me on this warrant.

Q. Were you told anything in open court by a Mr. William Knous?
A. Yes, I was. My wife was arrested for writing insufficient funds checks in Grand Junction. She had four of them. She come to the jail and she became sick.

The doctor examined her and told me that this woman should not be in jail. I went to Mr. Knous and I said, "All right, Mr. Knous, you want me, get me, get the keys to your penitentiary; tell me how long you want me to stay in it, and I will go. But turn my wife loose."

He said, "If you will plead guilty to the checks she's written here," he said, "I'll turn her loose."

Q. Did he indicate anything as to withdrawal of charges arising out of the Statler Hotel matter? A. Yes, in the court before Judge Barker, the J. P. Court Judge in Grand Junction. I said, "What about this thing
143 that is supposed to be on me from Washington, D.C.? What are we going to do about this?"

He said, "I assure you and give you my word as a State Attorney for the State of Colorado, in front of Judge Barker here, in front of the Judge, that you will not go back to Washington, D. C."

Q. And that was in August of 1961? A. No, this was approximately -- this was approximately 30 days before United States Marshal Billis came to the Grand Junction County Jail.

Q. Bringing your attention to another matter, I would ask you whether you recall Deputy U. S. Marshal Lawrence Billis, who appeared here in court this morning, coming to the jail in Grand Junction and seeing you at the jail? A. I very well do.

Q. Do you recall having made any indication at that time as to your willingness or refusal to leave the jail? A. I refused -- Deputy Sheriff came up to the jail or to the cell and told me -- he said, "You get dressed, you're leaving."

Q. Would you tell the Court further as to just exactly what was said

144 between you and the Sheriff and -- A. Well, I told the Sheriff I was not leaving.

Q. What was your basis for telling the Sheriff that? A. That I hadn't done anything, I was not going any place until I was allowed to go into a courtroom before a judge.

Q. What were you told at that time? A. He left. He went back downstairs and he talked to the Marshal. Then he came back upstairs, and told me again that I had to go.

And I told him -- I said, "You send the Marshal up here."

Q. Did the Marshal come up to see you? A. He did.

Q. What did he do? A. He came up there and he said he had a warrant for my arrest. And I said, "May I see this warrant for my arrest?"

He handed it through the bars to me.

I looked at it and handed it back to him. I said, "No, this is not so. I have not done this, and this thing has already been filed on me here and sent back to Washington, D.C.," that I was not the person that had done this,

145 Washington, D. C., indicted me, and sent the indictment out there.

They stated in the paper that I read that I was indicted by a Grand Jury and this was sent out there and sent back to Washington, D. C., and that I wasn't the person that did it --

THE COURT: This is getting awfully close to the line. I don't see how he can ask for immunity when he is testifying directly to the point. I don't see how he can in fairness ask for immunity in cross-examination.

MR. MURPHEY: If that's the way Your Honor is feeling about it, we would withdraw him from the stand, because we don't want to waive this question of immunity.

However, at the same time we have had substantial testimony, over my very serious objection this morning, and we feel that this is a matter of a preliminary nature not involving the merits, and --

THE COURT: I stated to you before you put him on the stand, Mr. Murphey, that if he testified to a matter concerning his identity --

MR. MURPHEY: That's true.

THE COURT: -- that he would open up the whole thing.

MR. MURPHEY: That's true. And Your Honor also indicated that by testifying as to certain of these matters he would not waive his immunity.

146 THE COURT: That is right.

MR. MURPHEY: And certain of those matters is what we are touching on. I don't know what they would be, unless they were the matters touched on by Mr. Billis.

THE COURT: Well, proceed.

MR. MURPHEY: I have been going on good faith as to Your Honor's rulings --

THE COURT: I have been going on good faith on your conduct as well, that this would pertain to the Grand Junction proceedings but would not take the line that he was not the man. And he is not saying he is not the man. He is just referring to other conversations, transactions from which he would want me to draw the inference that he is not, which is a round-about way of accomplishing the same result.

But proceed. We'll --

MR. MURPHEY: I think we ought to have it fairly clear as to whether we are proceeding under an understanding --

THE COURT: I have outlined the ground rules here, and I am not going to do it further. So you go -- if you want him to testify as to something further, why, ask him the questions.

147 BY MR. MURPHEY:

Q. I would like to ask you whether or not when you were in the Denver County Jail you recall having overheard any conversation between Mr. Billis and Sergeant Harvey Fisher, the receiving sergeant? A. I did.

Q. And can you relate to the Court the substance of that conversation? A. Yes, I can.

Mr. Billis brought the same paper that said that I waived all my rights to a hearing and legal counsel and legal representation, that I refused to sign for the United States Commissioner. He brought this same paper to the Denver County Jail. And asked me -- he said -- he asked me to sign this.

And I said, "Mr. Billis, my attorney has instructed me not to sign anything."

And he didn't push the issue at all then. He just turned around and Mr. Fisher said, "Would you like to use our telephone to call your office?" And he said yes.

And then he turned around and he walked back behind the counter, he said, "I hope they hang him." And then they took me back into the jail-house, I assumed to hang me.

148 THE COURT: They didn't do it.

THE WITNESS: Not yet, sir.

MR. MURPHEY: I might say, Your Honor, that it is the contention of the defendant that that is --

THE COURT: Mr. Murphey --

MR. MURPHEY: -- that is the intention. Saying that with a certain felicity.

THE COURT: Well --

BY MR. MURPHEY:

Q. One further question, Mr. Accused --

THE COURT: The Court is determined that it shall not happen, Mr. Murphey.

Q. [By Mr. Murphey] I would ask you whether or not in your conversations at some time with Mr. Lawrence Billis, the Deputy United States Marshal who testified here today, whether you did not ask him why you were not taken before a Commissioner in Grand Junction? A. Yes, I did ask him. I said, "Why can't I go before the United States Commissioner in Grand Junction, Mr. John Laverty?"

Q. What were you told at that time? A. I was told at that time that they could -- that he could take me before any Commissioner or they 149 could take me before any Commissioner they choosed. This I did not question, because if my government were to call me and tell me to come to Washington, D. C., I would do anything in my power to get there. As far as I am concerned, my government can come and get me any place they want me, and they don't have to have chains to get me.

MR. MURPHEY: I have no further questions.

THE COURT: Cross-examination?

CROSS EXAMINATION

BY MR. HENRY:

Q. What is your name?

MR. MURPHEY: If Your Honor please --

THE COURT: We have to identify the witness.

MR. MURPHEY: You have no right to identify the witness.

MR. HENRY: I think we have the right to identify him.

MR. MURPHEY: We have identified the witness.

THE COURT: There is no contention that his name isn't Galloway,
is there?

MR. MURPHEY: We have not indicated one way or the other what
his name is. We have identified the witness in terms as being the person
held in the Grand Junction Jail.

150 THE COURT: Well, overruled. That is ridiculous.

BY MR. HENRY:

Q. What is your name?

MR. MURPHEY: We object.

THE COURT: Very well, Your objection will be noted.

Q. [By Mr. Henry] What is your name?

MR. MURPHEY: Is it going to be the ruling of Your Honor --

THE COURT: Yes, that he should.

I will direct you to answer that question.

THE WITNESS: My name -- my Christian name is William Charles
Galloway.

BY MR. HENRY:

Q. Thank you. And you are presently a resident of the County Jail
in Denver, Colorado, is that correct? A. I am incarcerated in the County
Jail in Denver, Colorado.

* * * *

155 [THE COURT] There were a series of findings in this case, and as
I have understood counsel's argument, it has been that the defendant has

a right to stand mute at all these hearings, which he did -- and I agree with this position -- and that the Government was required at the Commissioner's hearing to establish his identity. At least to the level of reasonable probability that it failed to do so. And so full hearing has been extended upon this issue.

We heard the Commissioner who testified that he was satisfied of the identity of the accused because of the fact that when he first appeared before him he asked him whether he was Charles William Galloway, in identifying him in connection with the original proceedings before the Commissioner, and that he said yes. And upon this basis, he reported to Judge Arraj that he was the identical man.

Now, in the face of the complete lack of evidence on the part of the accused that he is not the man, I found -- and I find -- that this evidence
156 is sufficient in my own mind. I had no doubt whatsoever but that he is the identical man named in the complaint.

Nevertheless there was a sort of absence of evidence before the Commissioner, and so further testimony which disspeled any possible doubt has been offered, and it is overwhelmingly adequate.

Counsel has objected here today as to the propriety of the Court's hearing additional evidence on this. There having been a hearing before the Commissioner. A careful study of Rule 40 does not reveal that hearing before the Commissioner is final and conclusive as to the Government. In other words, as I read the Rule, it contemplates a hearing before the Commissioner, of the Court. It doesn't say the Court has a reviewing function only and so I can conclude that the Court has a right to try the matter de novo, if it wishes to do so.

This is my interpretation of the Rule, and to my mind it is the obligation of the Court to see to it that substantial injustice is avoided by ordering the removal of a man where there is at least a strong doubt as to identity, and I think that the Court should make inquiry to satisfy itself that it is the same man. And its been with that approach that I have made
157 these rulings, and I am now convinced that he is the identical man.

* * * * *

160 MR. MURPHEY: I wanted to be sure we didn't waive our rights as to that by sitting mute, so to speak.

THE COURT: As far as I am concerned, you have waived no rights. If you have, I haven't observed it.

MR. MURPHEY: I don't believe it is necessary to take an exception to these rulings, but this record --

THE COURT: Let the record reflect that you except to each and all of them.

* * * *

[Filed April 18, 1962] WARRANT OF REMOVAL ON INDICTMENT

To any United States Marshal, or authorized officer:

The grand jury of the United States for the District of Columbia having indicted WILLIAM C. GALLOWAY on a charge of obtaining lodging, food and accommodations at a boarding house and lodging house without payment therefor, with intent to defraud the proprietor and manager thereof, and with making, drawing, uttering and delivering insufficient fund checks in violation of 22 D.C.C. 1301 and 1401, the said WILLIAM C. GALLOWAY having been arrested in this District and, after hearing, having been committed by a United States Commissioner to your custody pending his removal to that district.

You are hereby commanded to remove WILLIAM C. GALLOWAY forthwith to the District of Columbia and there deliver him to the United States Marshal for that District or to some other officer authorized to receive him.

/s/ WILLIAM E. DOYLE
United States District Judge

Dated at Denver, Colorado this 20th day of February 1962.

RETURN

* District of Colorado ss

Received the within warrant of removal the 17th day of April 1962 and executed same by removing same and committed him to the U. S. Marshal for the District of Columbia for further removal to the D. C. Jail 4/17/62.

William H. Terrill U. S. Marshal

By /s/ Leonard F. Hopper
Deputy Marshal

[Filed May 4, 1962]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES)
vs.) Criminal No. 134-62
WILLIAM C. GALLOWAY,) Charge: False Pretenses
Defendant.)

PLEA OF DEFENDANT

On this 4th day of May, 1962, the defendant ---- William C. Galloway ---, appearing in proper person and by his attorney S. David Rubenstein, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, stands mute. The Court directs a plea of not guilty. The defendant is granted 10 days to file motions and is remanded to the District of Columbia Jail.

By direction of

Alexander Holtzoff
Presiding Judge
Criminal Court #

* * *

* * *

[Filed May 15, 1962]

MOTION TO QUASH ARREST
AND DISMISS PROCEEDINGS

Comes now the defendant, William C. Galloway, by his counsel, S. David Rubenstein, and moves this Honorable Court to quash the arrest of the defendant herein and dismiss the proceeding and for reasons in support thereof, represents as follows:

1. On to wit August 22, 1961, defendant was then incarcerated in the Mesa County jail, Grand Junction, Colorado, at which time the Sheriff of Mesa County received telegraphic notice of a complaint issued from the District of Columbia for the return of one William C. Galloway to the

District of Columbia and that an information or indictment would follow shortly thereafter.

2. That the defendant was not taken before a United States Commissioner until December 28, 1961.
3. Defendant requested that he be taken before the nearest United States Commissioner, there being such an official in Grand Junction, Colorado, but his request was denied and he was transported, under opposition, to Denver, Colorado.
4. At the time of his appearance before the United States Commissioner in Denver, Colorado, he was addressed by name and, having acknowledged his name, was then advised of his constitutional rights against self incrimination, and his right to counsel.
5. As the result of the acknowledgment of his name referred to above, the United States Commissioner found that the defendant and the person indicted as William C. Galloway are one and the same person. This establishment of identity remained throughout further and additional proceedings despite a further hearing before the said United States Commissioner at Denver, Colorado, at which time the defendant was represented by counsel who required strict proof of identity by the United States Attorney who then stood silent and proffered no testimony.
6. That the defendant has been denied his constitutional rights in that he was, (a) not promptly taken before a committing magistrate, (b) no evidence was presented before the United States Commissioner to indicate probable cause that an offense had been committed and that the defendant had committed it and, (c) that defendant was caused to identify himself before being advised of his constitutional rights against self incrimination.

/s/ S. David Rubenstein
Attorney for Defendant

[Filed Nov. 16, 1962]

**EXCERPTS FROM TRANSCRIPT OF
HEARING ON MOTION**

1

Washington, D. C.
Friday, May 25, 1962

The above-entitled case came on for hearing on motion at 10 o'clock a.m., on Friday, May 2, 1962, in the United States District Court for the District of Columbia, in the Courthouse at Washington, D. C.

B E F O R E

HONORABLE JOHN J. SIRICA, Judge of the United States District Court for the District of Columbia.

* * * * *

5

MR. RUBENSTEIN: Criminal No. 61-62, as Mr. Murphy stated, was a charge based upon an information that was sent out to Grand Junction, Colorado, where at that time, which was in August 1961, the defendant was then incarcerated in the state or county jail at Grand Junction, Colorado.

The problem that we have and the problem I am urging upon the court at this time is that this defendant has been deprived of his constitutional rights. It is true, and we do not attempt to deny the fact that the man was incarcerated at the time that first the teletype was sent to the Grand Junction jail, but no action was taken in connection with any information sent from the District of Columbia, and I use the word "not" technically as an information, but information of detention, relating to detention.

Nothing was used to follow that up in a prompt and expeditious manner, and it was not until December 28 of 1961, approximately four months later, that this man was taken before the United States Commissioner, and

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certainly this was, we urge, an unreasonable delay.

THE COURT: What was he serving time for out there? Was he in jail on another charge?

MR. RUBENSTEIN: Yes, sir, for a state charge, State of Colorado.

* * * * *

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MR. RUBENSTEIN: If Your Honor please, I wonder if I might place the defendant upon the stand so that we might get any facts that you may wish.

* * * * *

WILLIAM C. GALLOWAY

* * * * *
DIRECT EXAMINATIONBY MR. RUBENSTEIN:
* * * * *

Q. Mr. Galloway, will you please advise the Court the charge upon which you were held in Grand Junction jail in August 1961? A. Well, I was held actually, Your Honor, sir, on two charges. One was a telegram from Topeka, Kansas, that said that I had failed to appear in court over there in violation of a fine. However, Topeka, Kansas, failed to follow this up, and I had a letter from an attorney in Topeka, Kansas, that said that Topeka doesn't want me, that this apparently is not so.

8 Anyway, Judge Dutcher in the Seventh District Court out there for the State of Colorado ordered my release. I was held in addition on another charge, sir, that I had written an insufficient funds check. However, the insufficient funds check, the man that I was supposed to have given it to, told Mr. Knauth, the States Attorney, I didn't do it, and this thing from teletype, from Washington, D.C. was out there, and I asked them to take me to court, and they refused to take me to court.

Then on the 24th day of November, I realized that my wife had written a check to the Bullock Department Store, and Mr. Knauth told me that if I would go to court and plead guilty to that, that he would release her, and that this from Washington, D.C. would not be held against me. In other words, Washington, D.C. did not want anything to do with me.

I did this, and then this, as I said, was in November, but up until that time they would not set any bail, but I was held under no other charge, other than the information from Washington, D.C., and I asked repeatedly to go to see Mr. John Lafferty, who is the United States Commissioner in Grand Junction, and they said: Well, you don't need to see Mr. Lafferty because you haven't broken any Federal laws, and you are not even accused of breaking any Federal law, but the sheriff continued to hold me in jail.

9 MR. RUBENSTEIN: I was going to say, Your Honor, this basically is the background.

THE COURT: Is that all you want to ask him?

MR. RUBENSTEIN: There would be something that I would come to in a moment, Your Honor, if it would not embarrass the Court, and I would ask him then.

THE COURT: All right, let him stay right there.

MR. RUBENSTEIN: The defendant has already stated to the Court that he asked to be taken before the nearest United States Commissioner, there being a United States Commissioner in Grand Junction, Colorado, and this was not done. His appearance was actually before the United States Commissioner in Denver, Colorado. My geography is not good, Your Honor, but I understand that is at the opposite end of the state. I don't know which is east or west, but they are at opposite ends of the state, and I do not feel that this is the intent of the nearest available United States Commissioner.

Now, the important point, Your Honor, is this: The man came before the United States Commissioner on an information. An information in and of itself is not *prima facie* evidence of the commission of a crime.

In connection with the warrant of removal, certain additional factors must be ascertained before the United States Commissioner, unless a hearing is waived, or unless there is consent to be removed. In this case there

10 is consent to be removed. In this case there was no such consent, nor was there a waiver of hearing, and as I say, Your Honor, I am keeping the accused upon the stand so that in case there is any point that is not clearly set forth by me, we can go immediately to the defendant and ask a question for a direct statement under oath.

* * * * *

BY MR. RUBENSTEIN:

Q. Mr. Galloway, addressing yourself to December 28th when you appeared before the United States Commissioner in Denver, Colorado, will you tell the Court the sequence of events, or conversations or statements, between you and the United States Commissioner on that day?

A. Well, the only thing I did, sir, was I asked Mr. Oats, when he told me to sit down, I asked him what I was charged with, as yet no one had given me any paper or anything to tell me, and Mr. Oats told me he didn't know, and he said that I had two choices, that I would take Rule 20 or Rule 40, and I asked him to explain what he meant by Rule 20 and Rule 40, and he told me what he meant by them, and then I said: Well, sir, what am I charged with, and again I asked him.

11 And he said he didn't know what I was charged with, and I asked then to go before the District Court Judge, the Federal District Court Judge in Denver, and he told me I could not go to see the judge.

And then I asked him if I could see legal counsel, and Mr. Oats told me that I was old enough to make up my own mind, and so then he put a piece of paper in the typewriter, and he typed on it and told me to sign it, and I would not sign it, and he told me he would give me a week to make up my mind to sign, and six days later Mr. Dwight Murphy came out to the jail.

MR. RUBENSTEIN: This is basically the second point of our motion, and I will ask him a question.

BY MR. RUBENSTEIN:

Q. During your appearance before the United States Commissioner on December 28, 1961, were you advised of your constitutional rights?

A. No, sir, I was not.

* * * * *

12 [MR. RUBENSTEIN]: However, it is our position that the man was brought before the United States Commissioner on proceedings relating to the initial appearance, which was upon an information, and accordingly

13 his counsel out there demanded that the United States put on strict proof of both identity and probable cause for removal. No testimony was offered on either point, and it was only on the original statement of the defendant in his acknowledgment of his name that the identity issue was resolved, and the United States Commissioner found probable cause based upon the indictment, and subsequently the accused was brought before this court.

* * * * The criminal rules of procedure establish specific manners and means and procedures to be followed in connection with the protection of a citizen's rights before the courts of this country, and if it please the Court, we feel that nothing was done properly which would have been cause for this man being before this court at this time, and therefore we ask that this arrest and all the proceedings flowing therefrom be dismissed.

* * * * *

14 MR. MURPHY: May it please the Court, the Government's basic position is this in this case: That the jurisdiction of the court is not impaired by the means by which this defendant came before it, in view of that basic rule of law set out in, for example, United States versus Green, 88 United States Appeals, D.C. 249, a case which involved a man who was charged with the identical crimes that this defendant is charged here, and the court said that it does not inquire into that.

If we accept that as the basic rule of law in this jurisdiction, there is nothing for this court to inquire further, and the Government would not proceed further, unless Your Honor so desires.

THE COURT: Well, I think the Government is right myself.

Is there anything further?

BY MR. RUBENSTEIN:

Q. May I ask the defendant, Your Honor: Do you have anything further on this, Mr. Galloway, that you wish the Court to be apprised of?

15 A. I know of nothing I can say, sir.

MR. RUBENSTEIN: I think we have submitted that upon which our motion is grounded.

THE COURT: I will deny the motion.

MR. RUBENSTEIN: All right, thank you, Your Honor.

(Thereupon the Court proceeded to other business, after which the following occurred:)

MR. RUBENSTEIN: When the original motions come in, Your Honor, may I appear to offer them before the court?

THE COURT: I don't understand you.

MR. RUBENSTEIN: When the motion -- I am sorry, when the affidavit I am expecting comes in, may I file it?

THE COURT: You may file it.

* * * *

[Filed June 20, 1962]

AFFIDAVIT

STATE OF COLORADO,
CITY AND COUNTY OF DENVER, SS:

DWIGHT D. MURPHEY, of lawful age, being first duly sworn on his oath states and avers as follows:

1. That he is a member of the Colorado Bar and is a practitioner before the United States District Court for the District of Colorado.
2. That he is the Court appointed attorney for the above named defendant.
3. That the United States Commissioner, Mr. Harold Oakes, did, several days prior to February 16, 1962, notify your affiant that a hearing would be held in accordance with Rule 40(b)(3) to determine whether the said United States Commissioner should recommend to the United States District Court that a warrant of removal issue against said defendant authorizing his removal to Washington, D. C., under an Information then pending charging a William C. Galloway with violation of the misdemeanor provisions of Title 22 D.C.C., Sec. 1301.
4. That your affiant received a telephone call from the said United States Commissioner on the morning of February 16, 1962, informing him that a six-count Information had been filed against a William C. Galloway, replacing the aforesaid Information, and that a hearing for removal would be held upon the said indictment under Rule 40(b)(3) at 2:00 P.M. on February 16, 1962, based upon the said indictment.
5. That at the said hearing at 2:00 P.M. on February 16, 1962, the above named defendant stood mute upon the question of his identity, neither

admitting nor denying the same, doing so upon the instruction given him by your affiant, and your affiant did inform the United States Commissioner at that time and place that it was the desire of the Defendant to place the United States Attorney upon strict proof as to the issue of identity.

6. That the said hearing, which was attended by your affiant, no witnesses of any kind were called, nor any evidence taken, concerning any issue whatsoever, including the issue of the identity of the defendant, over the repeated objection of your affiant.

7. That, as a result of this failure to take testimony, your affiant had no opportunity to cross examine any witnesses as to the issue of identity or any other pertinent issue.

8. That at the said hearing your affiant did raise before the United States Commissioner the questions of Due Process of Law substantially as they were raised in the aforesaid defendant's motion for order denying Commissioner's application for removal and discharging the defendant, which motion was filed with the United States District Court on February 16, 1962, with supporting affidavit. Your affiant did at the hearing on the issue of removal tender unto the United States Commissioner the aforesaid motion and moved for the discharge of the defendant at that time, which motion was denied by the United States Commissioner.

9. That this Affidavit is essentially identical to an Affidavit filed by your affiant in the United States District Court for the District of Colorado in Commissioner No. 19880 on the 19th day of February, 1962.

FURTHER AFFIANT SAYETH NOT.

/s/ Dwight D. Murphey

Subscribed and sworn to before me this _____ day of May, 1962.

NOTARY PUBLIC, D.C.

My Commission expires: _____

[Filed June 20, 1962]

AFFIDAVIT

STATE OF COLORADO,
CITY AND COUNTY OF DENVER, ss:

DWIGHT D. MURPHEY, of Lawful age, being first duly sworn on his oath states and avers as follows:

1. That he is a member of the Colorado Bar and is a practitioner before the United States District Court for the District of Colorado.
2. That on or about the 2nd day of January, 1962, the United States District Court, by order of Judge Alfred A. Arraj, did appoint your affiant as attorney to represent the above named defendant, which appointment the affiant did then and there accept.
3. That the defendant had been in the custody of the United States Marshal and incarcerated in the Denver County Jail for several days prior to this appointment.
4. That within a few days a hearing was held before the United States Commissioner, at which time a continuance of the Commissioner's proceedings was obtained for a period of one week, pending the filing of motions with the United States District Court.
5. That during that week your affiant did file with the United States District Court a motion for order discharging defendant and for stay pending disposition of motion, specifying as a ground for that motion that the Complaint and Warrant for Arrest against the defendant recited an alleged violation of Title 22, D.C.C. Section 1301, as follows: "William Charles Galloway did by false pretense, with intent to defraud, obtain from the Statler Hilton Hotel, lodgings and related services in the value of \$479.30 and \$13.60 in cash, and did pretend that a certain paper writing in the nature of a bank check drawn on the First National Bank of Cookeville, Tennessee, for the sum of \$492.96 was then and there a good valid order, then and there knowing the same to be worthless." In the aforesaid motion, your affiant and the defendant made it clear unto the court that the statute under which the defendant was charged did not set

out merely one offense, but two, one of them being a felony and the other being a misdemeanor, and because of this duality in the statutory language it was impossible to determine with which offense the defendant was charged.

6. Upon the filing of the aforesaid motion, a date was set by the court for a hearing thereon, and a stay of proceedings was issued by the court barring further action by the United States Commissioner pending the disposition of the said motion.

7. That pending hearing upon the said motion, the United States Attorney's office did file with the Court an Information charging that "On or about May 31, 1961, within the District of Columbia, William C. Galloway did commit a misdemeanor in that he did obtain lodging, food and accommodations of the value of \$492.96 at the Hilton Hotels Corporation, a body corporate, an inn, boarding house and lodging house without paying therefor, with intent to defraud the proprietor and manager thereof."

8. A new Information having been filed charging only a misdemeanor, your affiant did file with the Honorable Court a motion for order reducing bail, alleging therein that the bail theretofore set at \$2,500.00 had been set by the United States Commissioner in anticipation that the charge was a charge of a felony, and that the said bail was excessive in light of the subsequent reduction of the charge to the status of misdemeanor.

9. That on February 2, 1962, a hearing was scheduled before Judge Doyle of this Court at 9:30 A.M. upon the said motion for reduction of bail.

10. That the United States Marshal did not produce the defendant from the Denver County Jail at said time and place and it was necessary to re-schedule the hearing upon the said motion for 11:00 A.M. on the same day.

11. That at the hearing held at 11:00 A.M. on February 2, 1962, the United States Attorney did indicate unto the Court that the first Complaint filed in this action against the said defendant was being withdrawn and the Information was being substituted therefor.

12. That at the said hearing upon the motion for reduction of bail, this Court did deny the motion and did allow the bail to stand in the amount of \$2,500.00, which bail was excessive and which bail the defendant has not been able to post.

13. That on or about Monday, February 5, 1962, your affiant did contact Mr. Robert B. Cartwright, the Clerk of the United States Court of Appeals in Denver, Colorado, and did inquire of him concerning the availability of a judge or judges to rule upon an appeal of the motion denying reduction of bail.

14. That at said time your affiant was informed by the said Mr. Cartwright that all of the judges of the United States Court of Appeals would be gone from Denver, Colorado, no later than Wednesday, February 7, 1962, and that there was for that reason only a very remote possibility of obtaining a ruling upon such an appeal.

15. That upon Tuesday, February 6, 1962, your affiant did file with the United States Court of Appeals in Denver, Colorado, an Appeal from District Court Order denying motion for reduction of bail and an Affidavit in Forma Pauperis in support thereof.

16. That on February 10, 1962, your affiant did receive from the said Mr. Cartwright a letter dated February 9, 1962, informing your affiant that "An order has been entered today denying the motion for reduction of bail."

17. That upon further inquiry of Mr. Cartwright, it has been determined by your affiant that Judge Murrah did remain in Denver until Saturday, February 10, 1962, and before leaving did deny the aforesaid appeal without a hearing and ex parte.

18. That the United States Commissioner did set, shortly after February 2, 1962, the date of Friday, February 16, 1962, for a hearing upon the question of "probable cause" to determine whether the said defendant should be removed to the District of Columbia in accordance with Rule 40 of the Federal Rules of Criminal Procedure, said hearing to have been on that day at 2:00 P.M.

19. That on the morning of February 16, 1962, your affiant did receive a telephone call from the United States Commissioner informing him for the first time that a six-count indictment had been received from the District of Columbia, which indictment replaces the former Information.

20. That your affiant thereupon obtained a copy of that Indictment from the United States Commissioner and had determined from that copy that the said indictment, containing six counts, fails to state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.

21. That, because of this failure, your affiant has been unable to determine, as with the earlier Complaint, whether as to each count the defendant is charged with having violated Title 22, D.D.C., Section 1301 or, Title 22, D.D.C., Section 1401 as to its felony provisions, or Title 22, D.D.C., Section 1301 as to its misdemeanor provision, or Title 22, D.D.C., Section 1410.

22. That as a result of this failure of the indictment so to specify, your affiant is unable to advise his client properly as to how he may best proceed under the terms of Rules 20 and 40 of the Federal Rules of Criminal Procedure.

23. That as a result of the aforesaid shifting of Complaints, Information and Indictments, and the insufficiency thereof, the defendant has been in jail, under excessive bail, for a period of time beginning several days prior to January 2, 1962.

24. That this Affidavit is essentially identical to an Affidavit filed by your affiant in the United States District Court for the District of Colorado in Commissioner No. 19880 on the 16th day of February, 1962.

FURTHER AFFIANT SAYETH NOT.

/s/ DWIGHT D. MURPHEY

[JURAT]

[Filed November 16, 1962]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

Washington, D. C.
June 20, 1962

The above-entitled cause came on for trial before the HONORABLE JOSEPH C. McGARRAGHY, United States District Judge, at 10:30 a.m.

2

C O N T E N T S

EXHIBITS:

<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
-------------------------------	------------------------

GOVERNMENT'S:

No. 1 - Statler-Hilton registration card dated 5/22/61, showing registration of Mr. and Mrs. W. C. Galloway.	12	14
No. 2 - Record of charges at Statler-Hilton.	15	18
No. 3 - Slip attached to Government's Exhibit 3-A.	20	22
No. 3-A - Check dated May 31, 1961 for \$492.96, bearing signature of W. C. Galloway.	20	22
3 No. 4 - Collect Night Letter	23	25
No. 4-A - Telegram dated June 9, 1961.	23	25
No. 4-B - Certified mail postmarked June 13, 1961.	24	25
No. 5 - Front of Burlington Hotel Registration Card of W. C. Galloway.	50	52
No. 6 - Burlington Hotel folio for Mr. and Mrs. W. C. Galloway.	54	57
No. 7 - Check for \$133.16 bearing signature of W. C. Galloway.	58	60
No. 7-A - Slip attached to Government's Exhibit 7.	78	80

CONTENTS

<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
<u>GOVERNMENT'S:</u>		
No. 8 - Check for \$64.91 bearing signature of W. C. Galloway	58	60
No. 8-A - Slip attached to Government's Exhibit 8.	78	80
No. 9 - Carbon copy of letter to The Equitable Trust Company.	84	84
No. 10 - D. C. Jail photograph of Defendant.	92	Withdrawn
No. 10 - Fingerprint card of William C. Galloway (Purpose of proving prints only).	97	101
No. 11 - D. C. Jail request slip dated May 21, '61, signed by Defendant.	102	108
No. 12 - D. C. Jail request slip dated May 3, 1962, signed by Defendant.	102	108
No. 13 - D. C. Jail request slip dated May 20, 1962, signed by Defendant.	102	108
3-A		
No. 14 - D. C. Jail Admission Slip.	102	
No. 15 - Baltimore Fingerprint card of Defendant (As designated by the Court).	112	118
No. 16 - Exhibit prepared by Witness Miller	130	132
*	*	*

4 MR. RUBENSTEIN: Defense has a motion which it wishes to urge before the actual impaneling of the jury relative to jurisdiction and for the dismissal of the proceedings.

The matter was heard previously in this matter, at which time we did not have available for presentation to the Court certain affidavits from counsel who had represented the Defendant in the State of Colorado

in connection with certain extradition proceedings. I have here the actual affidavits.

5 THE COURT: What is your motion?

MR. RUBENSTEIN: The motion, Your Honor, is based upon the fact that this man has been deprived of his constitutional rights in connection with the arrest and detention in the State of Colorado, all leading to his return here to the District of Columbia. He was held following notice from the District of Columbia from August 22 to December 28 before he was finally brought before a United States Commissioner and advised of what the charge was against him. Thereafter, there were certain proceedings before the United States Commissioner which --

THE COURT: Why didn't you tell me about this before I had a jury brought in here?

* * * * *

7 THE COURT: Judge Sirica denied the motion.

MR. RUBENSTEIN: Yes, Your Honor.

THE COURT: I will deny the motion.

MR. RUBENSTEIN: May the affidavits be filed?

THE COURT: The affidavits may be filed in the case.

* * * * *

10 ARTHUR G. ABBOTT

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS LINDEMANN:

* * * * *

11 Q. Mr. Abbott, what is your occupation? A. I am the credit manager of the Statler-Hilton Hotel in Washington, D.C.

Q. Was that your occupation in May of 1961? A. It was.

* * * * *

13 Q. Now, sir, examining Government's Exhibit 1, for identification, will you tell us specifically what that is? A. This is the registration of

Mr. and Mrs. W. C. Galloway, which was made at 7:58 a.m. on May 22, 1961. It indicates that these people were assigned to Room 772 at that time. It also indicates that this person registered from 615 West Spring Street, Cookeville, Tennessee.

* * * *

15 THE WITNESS: I have a record here of charges incurred.

* * * *

MISS LINDEMANN: May we mark this as Government's Exhibit 2, for identification?

THE COURT: Is that the account of the hotel with respect to the Galloways?

THE WITNESS: Yes, sir.

THE COURT: Very well.

* * * *

16 [BY MISS LINDEMANN:]

Q. Specifically, Mr. Abbott, will you tell us what that document relates to? A. This is a record of charges incurred by Mr. and Mrs. W. C. Galloway, who were registered in Room 772 at the Statler-Hilton Hotel between May 22, 1961 and May 31, 1961.

Q. Is there any indication, sir, on that document as to the status of the obligations that were incurred by the persons occupying that room?

A. This record shows that payment of \$492.96 was received on May 31

17 by check.

* * * *

18 Q. Looking at that document again, sir, could you tell us if it reflects what lodgings, food or accommodations, or other things W. C. Galloway received from the Statler-Hilton Hotel? A. These charges which are listed here covered food, beverage, valet, long-distance charges, and laundry charges, and some incidental charges, such as cigar stand, which it doesn't specify what was obtained at the cigar stand, but in any event it is a purchase made at the cigar stand. There was more than one of that particular item. I see three here listed in that way.

Q. Now, sir, after June 1, 1961, did that document, Government's

Exhibit 2, ever come to your attention? A. Yes.

Q. Can you tell us how it happened to come to your attention, sir?

19 A. As I stated before, we received a check in connection with these charges, and the check was processed through our bank for clearance, but it was returned to the hotel; and all such checks come to me. And in the course of investigating the case, one of the first things I had to do was to get these records out to show what we received the check for.

* * * *

20 BY MISS LINDEMANN:

Q. I show you Government's Exhibits 3 and 3-A, for identification, Mr. Abbott, and I ask you if you can tell me what that is, sir? A. This is what we call a counter check. It is a blank form which is filled in by an individual who does not have his own printed check form. This is a check which is signed, "W. C. Galloway," payable to the Statler-Hilton Hotel, in the amount of \$492.96, dated May 31, 1961. On the reverse is an indorsement of the Statler-Hilton Hotel, dated May 31, 1961. The indorsements of banks and clearing houses were cancelled, and the check was returned with an advice slip of the First National Bank, Cookeville, Tennessee, marked, "No account as signed. Evidently drawn on us in error."

* * * *

26 Q. Mr. Abbott, did the Statler-Hilton Hotel, to your knowledge, ever receive payment for the hotel bill for \$492.96, Government's Exhibit 2, or was the check, Government's Exhibit 3-A in that amount ever made good to the hotel? A. It was not. Payment was never received, and for that reason, on September 6, 1961, I wrote the account off as uncollectible.

* * * *

28 JOYCE FOISY

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS LINDEMANN:

* * * *

29 Q. Tell me, what was your occupation in May of 1961? A. Front office cashier at the Statler-Hilton in Washington, D.C.

Q. I want to show you Government's Exhibit 3-A, and ask you if you recognize this document, Miss Foisy? A. Yes, I do.

Q. How do you recognize it? A. Well, I have written on it myself.

Q. You recognize your own handwriting? A. Yes, I recognize my numbers.

Q. What is written in your handwriting, Miss Foisy? A. Well, the room number -- I recognize that as a room number, and a folio number for a bill.

Q. Will you tell us specifically what is written? A. I see that I have accepted this check from someone that is registered in 772; their folio number is D 73665.

Q. By folio, you mean the bill, Government's Exhibit 2, is that correct? A. Yes, that is right.

* * * *

31 Q. In examining that check, Miss Foisy, bearing in mind all of the factors that you have just told us about, can you tell us whether or not that check was given to you on May 31, 1961 in payment of the bill for \$492.96, Government's Exhibit 2? A. Yes, this check was given to me.

32 Q. In payment of that bill, Miss Foisy? A. Yes.

* * * *

49 WILLIAM S. IRVINE

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS LINDEMANN:

* * * *

Q. What is your occupation, Mr. Irvine? A. Night auditor at the Burlington Hotel.

* * * * *

50 Q. I show you Government's Exhibit 5, for identification, Mr. Irvine, and I ask you if you would examine that, please.

Do you recognize that exhibit, sir? A. Yes, I do.

Q. How do you recognize it? A. Well, it is a registration card used by the Burlington Hotel, and registration of Mr. and Mrs. W. C. Galloway, in Room 339 on 5/15/61, with my initials, as registering Mr. Galloway in.

* * * * *

53 HUBERT J. MOORE

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS LINDEMANN:

Q. Mr. Moore, would you tell us your name and address?

A. Hubert J. Moore. My address?

Q. Your address, sir. A. 6809 Fairfax Road, Bethesda, Maryland.

Q. What is your occupation, Mr. Moore? A. I am the front desk cashier at the Burlington Hotel.

Q. Was that your occupation in May of 1961? A. It was.

Q. What were your duties at the hotel, sir? A. Well, I check people out, render their bills to them, total their bills. Check the people out. And post the charges from the various departments in the hotel, when they come to the desk, like the bar, cafe, laundry, valet service, things of that kind.

MISS LINDEMANN: May I have this marked as Government's Exhibit 6, for identification.

THE CLERK: Government's Exhibit 6, for identification.

54 (Whereupon Burlington Hotel folio for Mr. and Mrs. Galloway was marked Government's Exhibit No. 6, for identification.)

BY MISS LINDEMANN:

Q. Mr. Moore, I show you Government's Exhibit 6, for identification, and ask you to examine that, please. Can you tell us what kind

of a document that is and how it is customarily used? A. This is a folio, is a record of the charges for Mr. and Mrs. Galloway from the 15th --

Q. Just tell us what kind of a form it is, sir, and how it is customarily used. A. What kind of a form?

Q. Yes. A. That is what we call a folio in the hotel.

Q. What does that mean, a folio, sir? A. That means this is a statement of his account while he was in the hotel of all his room, and the other charges that came to the desk that were posted against that account.

THE COURT: Posted on that folio?

THE WITNESS: Yes, sir.

BY MISS LINDEMANN:

Q. Was that the form and procedure which was customarily used
55 by the hotel in May of 1961? A. That is.

Q. Now, specifically, sir, what is that document? Not the form, but what is that specific document now, sir? A. Well, this is the particular document of Mr. Galloway.

Q. Will you tell us, sir, what if anything that document reflects concerning the room number, the date, the period covered, the charges covered, and the people involved? A. Well, this shows that Mr. and Mrs. Galloway checked in the hotel on the 15th of May, 1961, were assigned to Room 339. They were supposed to stay there for four days, to have checked out on the 19th of the month; and on the 19th of the month, Mr. Galloway gave me a check for \$133.16 to cover the bill up through that night. And the next day, why, he still didn't leave, said he had a few more people he wanted to see; and he gave me a check on Sunday night, which was the 21st of May, to cover his charges through that night, and, as I noted on the top of the folio, to go out on the morning of the 22nd. And his check was \$64.91 to cover that.

And that is my initials on the folio, to indicate that I was the one who had transacted that operation.

*

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*

57 MISS LINDEMANN: I offer the document in evidence at this time,
Your Honor.

MR. RUBENSTEIN: I would object, then, Your Honor.

THE COURT: I will overrule the objection. It will be received.

(Whereupon Government's Exhibit No.
6 was received in evidence.)

BY MISS LINDEMANN:

Q. Now, sir, looking at Government's Exhibit 6, the bill, the folio, can you tell us anything about the status of the obligations and charges reflected on that folio? By that I mean, was the bill paid or not? What happened about the money that was owing by Mr. and Mrs. Galloway on that bill? A. Mr. Galloway gave me a check on the 19th for \$133.16, 58 which was credited to his account. And then on the Sunday night of the 21st, he gave me a check for \$64.91, which was credited to his account.

MISS LINDEMANN: I ask that these two documents be marked as Government's Exhibits 7 and 8, for identification.

THE CLERK: Government's Exhibits 7 and 8, for identification.

(Whereupon check bearing signature
of W. C. Galloway in amount of \$133.16
was marked Government's Exhibit No.
7, for identification.)

(Whereupon check bearing signature of
W. C. Galloway in amount of \$64.91
was marked Government's Exhibit No.
8, for identification.)

MR. RUBENSTEIN: No objection.

BY MISS LINDEMANN:

Q. Mr. Moore, I show you Government's Exhibits 7 and 8, for identification, and I ask you to examine those and tell me if you recognize them.

Do you recognize them, sir? A. Yes, ma'am.

Q. How do you recognize them? A. They are for the same amount as applied on the account, and they have my initials on the back of the account and my stamp on there and my writing.

THE COURT: You say, on the back of the account.

59 THE WITNESS: Yes, sir.

And in my writing there is, Galloway, W. C., Room 339, Cookeville, Tennessee, 615 West Spring Street, which was the address on the folio, which would tie that to that, with my initials the same as on the folio.

This Exhibit No. 8 has the same identification, same initials, except on here I say, Universal Plastics, Cookeville, Tennessee, which was his business address on the folio. And this check here --

THE COURT: Which check?

THE WITNESS: The \$64.19 check. Mr. Galloway came down with the check made out for \$100.00, the way I remember it, and I told him, no, I couldn't credit him for that amount and give him the difference in change. I had to have a check for just the exact amount of the bill. Which he then got another counter check from me, and made this check out for that amount. And he was to leave the following morning, which he evidently did.

BY MISS LINDEMANN:

Q. Now, Mr. Moore, is the writing that you have indicated to us, the name and address, on the back of the check, in your handwriting, sir?

A. Yes, ma'am.

Q. And you recognize those checks as being what, sir? A. Definitely.

Q. As being what? What are those two documents? A. They are checks written on the counter check, and made payable to the Burlington Hotel, drawn on The Equitable Trust Company of Baltimore, Maryland, and signed, W. C. Galloway.

Q. Were they given to you, sir? A. Ma'am?

Q. Were those checks given to you, sir? A. Oh, yes, ma'am.

Q. In the course of your duties at the Burlington Hotel? A. That is right.

Q. What were they given to you for, sir? A. In payment of his account.

Q. Do you have any way of determining whether they were in fact given to you in payment of an account or for cash? A. They were in payment of the account.

MISS LINDEMANN: I ask that Government's Exhibits 7 and 8 be received in evidence.

THE COURT: You have no objection?

MR. RUBENSTEIN: No objection, Your Honor.

THE COURT: They will be received.

* * * * *

62 (Whereupon counsel approached the bench and the following proceedings were held:)

* * * * *

63 THE COURT: While you are here, you both told me this morning that these charges are misdemeanors. Isn't he being prosecuted under 1401 of the Code?

MISS LINDEMANN: Yes, he is.

MR. RUBENSTEIN: No, 1301 and 1410.

THE COURT: Oh, I see, 1301 and 1410. Do you have a Code?

MR. RUBENSTEIN: I have it right here.

THE COURT: Let me take a look at it.

MISS LINDEMANN: That is under the bad check statute and under the portion of the false pretenses statute that deals with unpaid board bill.

THE COURT: Oh, I see.

MR. RUBENSTEIN: This is 1410, Your Honor.

THE COURT: He is not being prosecuted under 1401.

MISS LINDEMANN: No, Your Honor.

* * * * *

(Whereupon counsel resumed their places at the trial table and the following proceedings were held:)

DIRECT EXAMINATION (Cont'd)

BY MISS LINDEMANN:

Q. Mr. Moore, prior to the luncheon recess, you identified for us Government's Exhibits 7 and 8. I show you these exhibits.

Do you recall the person who gave you those checks? A. Yes, ma'am.

Q. Can you tell us how you happen to recall that person? A. Well, he was in our hotel there for a week. I had several occasions to talk with him; and having been familiar with that section of the country where he registered in from, why, I talked to him about things in that area, because I happen to be from that section of the country myself.

Q. Where are you from, Mr. Moore? A. Tennessee, originally.

Q. And what was the address at which Mr. Galloway registered in the Burlington Hotel? A. From Cookeville, Tennessee.

* * * *

Q. Did you ever have a conversation with Mr. Galloway during the time he spent at the hotel? A. Yes, ma'am.

Q. What did he say to you and what did you say to him? A. Well,
65 I wouldn't remember the exact conversation because it wasn't of a business nature, but general conversation about the part of the country where he was from, and so forth, where he registered from. And so my having done business with him, he gave me these checks, and so forth, I would remember the man.

Q. About how many occasions did you have conversation with Mr. Galloway? A. Well, I wouldn't remember exactly but he was there for a week, so it was several. I would say three or four times that we spoke and maybe passed the time.

Q. Mr. Moore, do you see the person who gave you those checks present in this courtroom today? A. Yes, ma'am.

Q. Can you identify him for us? A. The gentleman sitting right over there.

Q. Would you come down from the witness stand, Mr. Moore, and stand behind the person who handed you those checks and tap him on the shoulder?

(Whereupon the witness left the witness stand.)

A. This is Mr. Galloway (touching Defendant).

Q. Take the stand, sir.

(Whereupon the witness resumed the witness stand.)

66 Q. What was the procedure, sir, when a customer gave you a check? What was the hotel procedure when a customer gave you a check in payment for a hotel bill? A. When he gave me a check, I immediately took the check and credited his account for the amount of the check. Turn the check over, and put a stamp on, which we have a special stamp. We stamp all the checks, and I initial it, and check it, whether it was paid on account or whether it was given cash, which is stated on the back. Also, the man's name, the room number that he is occupying, and his address on the back of the check.

Q. And is that the procedure which you followed when you received the two checks, Government's Exhibits 7 and 8? A. That is.

Q. Did you receive those checks, sir, within the District of Columbia? A. I did.

Q. To the best of your knowledge, Mr. Moore, was the Hotel Burlington ever paid for the hotel bill, Government's Exhibit 4? A. Not to my knowledge.

Q. And was the Hotel Burlington, to your knowledge, ever reimbursed for those two checks? A. Not that I know of.

MISS LINDEMANN: I have no further questions.

* * * * *

67 CROSS EXAMINATION

BY MR. RUBENSTEIN:

* * * * *

71 Q. All right. Well, let's go back. He was at the hotel and he spoke with you three or four times. A. Yes.

Q. And I presume that was socially that he spoke to you three or four times? A. More or less.

Q. And he also had two business dealings with you. A. That is right.

Q. All right. Now, using that basis, can you tell us how you could later recollect what he looked like? A. Well, I was naturally more or less interested in people who come from the same section of the country

72 where I am from, and I have been to that town several times myself, and naturally, I tied it in that way. And you more or less feel friendly with people from the same place that you are from. And I don't know, there is something about the man I would just recall him. I could have described him to you at any time.

Q. All right, sir. Would you mind facing that wall and describing him to me? A. Yes, sir. I would say that he is a little over six feet tall, maybe six-one or two, dark hair, slender built, probably weighs around 175 pounds; has a very nice manner, soft spoken, and very pleasant personality.

Q. That is the description, sir? A. (Witness nods assent.)

* * * *

74 Q. Now, regarding these two counter checks, first, Government's Exhibit 7, is dated May 19, 1961. Who prepared this check, sir?

A. Mr. Galloway.

Q. And then signed it and gave it to you? A. He signed it; he wrote it in my presence.

Q. The check of May 21, 1961, sir, who prepared that check?

A. Mr. Galloway.

Q. And signed it and gave it to you? A. He prepared it and signed it all at one time.

* * * *

76 BY MISS LINDEMANN:

Q. Mr. Moore, do you have any doubt in your mind as to who handed you those two checks? A. No, not a bit.

* * * *

WILLIAM P. WILLIAMS

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS LINDEMANN:

* * * *

77 Q. And what is your occupation? A. Manager, Burlington Hotel.

81

[BY MISS LINDEMANN:]

Q. Now, sir, to your knowledge, has the Burlington Hotel ever received payment for that hotel bill -- A. No.

Q. -- Government's Exhibit 4? And have the two checks, Government's Exhibits 7 and 8 -- have you ever been reimbursed for those two checks? A. No, we have not.

88

RALPH E. GREENE

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS LINDEMANN:

Q. Officer, would you tell us your name and assignment? A. Ralph E. Greene, assistant identification officer, D. C. Jail.

Q. For how long has that been your assignment, sir? A. Since October 1956.

Q. Are you custodian of the records of the D. C. Jail? A. I am.

89

Q. Will you tell us, when a prisoner is admitted to the District Jail, the procedure which is followed at that time? A. Start from the beginning when they are received from the courts?

90

[THE WITNESS:] * * *

These papers, in turn, are returned back down through the tube system through the receiving department, where the man starts through from the control center with the convoy officer. He is escorted to the back, where he is finger-printed, clothes taken off of him, pictures taken, after he has taken a shower. Fingerprints are then returned to the record office as being taken.

The man steps up to the table as John Doe. Fingerprints are sent back. If a new man -- they would send two prints to us. If ever been to jail before, we would only get one print, that is, a print card.

93

(AT THE BENCH)

MISS LINDEMANN: Your Honor, the only thing I wish to do at this time is to introduce four documents from the prison file of the Defendant Galloway as the known signatures of the man sitting at counsel table known to us to be the Defendant Galloway; that the man at the counsel table is the man who is presently in the District Jail; that these four documents are known signatures of the man sitting at counsel table.

94

THE COURT: You are not getting my question. They propose to offer certain signatures in this file.

MR. RUBENSTEIN: Yes, Your Honor.

THE COURT: Also certain fingerprints as being the signature and fingerprints of this Defendant.

MR. RUBENSTEIN: Yes, Your Honor.

THE COURT: Do you challenge those things?

MR. RUBENSTEIN: I am only going to challenge those, Your Honor, in so far as their being used for the purpose, in effect, of causing the man to testify against himself without being advised of his rights, because they are using matters --

THE COURT: What is your objection to this photograph?

95

MISS LINDEMANN: I understand that that objection only goes to one of the four documents that we wish to introduce, is that correct?

MR. RUBENSTEIN: What is that?

MISS LINDEMANN: There are four documents which he signed in this file. That your objection only goes to one of those four documents, is that correct?

MR. RUBENSTEIN: No. Let's get this clear. One of the four documents he signed because he had to sign it.

MISS LINDEMANN: That was the admission.

MR. RUBENSTEIN: That is right. I object to that altogether without formal proof.

The other three documents were requests. One was, for instance, a request to call me, his counsel; and they are going to use that to prove his guilt.

THE COURT: They are using it to prove his signature.

* * * *

97

(IN OPEN COURT:)

[BY MISS LINDEMANN:]

Q. Will you show me that fingerprint card?

MISS LINDEMANN: I ask that this be marked as Government's Exhibit 10, for identification.

THE CLERK: Government's Exhibit 10, for identification.

(Whereupon fingerprint card of William C. Galloway was marked Government's Exhibit No. 10, for identification.)

BY MISS LINDEMANN:

Q. Now, sir, will you tell us what that document is? A. This form is kept at the jail in the master file. It is the print -- when a new man comes in, two of these are taken. One, this is the Standard Form 61, the jail keeps. It goes in our master print file. The other print is for the FBI, is sent the next day.

98 The man is taken to the fingerprint table where the inmate clerks are on duty. These impressions here on top are rolled impressions. The ones on the bottom are the flat impressions.

The man's name is typed on here, White or Colored, and they are sent upstairs to the record office in that condition; and they are on the records all states over.

Q. Does that document, Government's Exhibit 10, for identification, bear any name? A. It does.

Q. What is that name, sir? A. William C. Galloway.

* * * *

100 MISS LINDEMANN: I will offer it just for the prints, Your Honor.

THE COURT: Just for the prints?

MISS LINDEMANN: At this time, if I may.

THE COURT: All right. Then you do not object to its being received solely for the purpose of proving the prints?

MR. RUBENSTEIN: That is right, Your Honor.

* * * *

102 MISS LINDEMANN: Your Honor, I ask that these documents be marked as Government's Exhibits, for identification, 11, 12, 13 and 14.

THE COURT: Very well.

THE CLERK: Government's Exhibits 11, 12, 13 and 14, for identification.

(Whereupon D. C. Jail request slip dated May 21, 1961, signed by Defendant, was marked Government's Exhibit No. 11, for identification.)

(Whereupon D. C. Jail request slip dated May 3, 1962, signed by Defendant, was marked Government's Exhibit No. 12, for identification.)

(Whereupon D. C. Jail request slip dated May 20, 1962, signed by Defendant, was marked Government's Exhibit No. 13, for identification.)

(Whereupon D. C. Jail admission slip signed by Defendant was marked Government's Exhibit No. 14, for identification.)

MR. RUBENSTEIN: Your Honor, may we approach the bench.

(Whereupon counsel approached the bench and the following proceedings were held:)

103 MR. RUBENSTEIN: These are the exhibits, Your Honor, that I started to make reference to.

This exhibit, which is No. 14, apparently is an admission slip. It is made out at the time that the man comes in; and I would like to interrogate the witness as to whether or not there is any option as to whether he can omit his signature on this or not. I think that he must sign it,

because this is an official record. This was not even taken voluntarily. It was taken under compulsion, and is now being used against him.

Next, sir, we have the question of these request slips. These request slips are made out in connection with anything he might wish to do at the jail. He must put his request in writing and one place or another affix his signature.

Now, it would be my position, Your Honor, representing the Defendant, that it would be completely unjust to permit these signatures to come in for the purposes of identifying this man, because the implication would be to the jury definitely that if he is identified, that is, whatever official identification is made of him is all going to tend to prove that he is the man who wrote the checks here, because they are going to try to tie these signatures to the signatures on the checks.

104 Actually the Government, I feel, would have the burden of proving that he did this without having to get him into jail in order to prove their case.

THE COURT: I don't agree with you on that. You challenge his signatures on these? You say he did not sign these?

MR. RUBENSTEIN: No, he did sign these.

THE COURT: He did sign them. We are now referring to Government's Exhibits 11, 12 and 13. I will overrule your objection as to 11, 12 and 13.

What do you have to say about 14? Is he required to sign that?

MISS LINDEMANN: I believe at the time the prisoner is admitted to the jail, he is required to sign that. However, the Government is offering that exhibit solely for the purpose of showing that the signature on that exhibit, Exhibit 14, is the signature of the Defendant present in the courtroom today.

THE COURT: Well, you are offering also as to 11, 12 and 13, aren't you?

MISS LINDEMANN: For the same purpose, Your Honor, yes, as a known signature of the Defendant Galloway.

THE COURT: In view of the fact that he concedes that 11, 12 and 13 are the known signatures of Galloway, in order to be on the safe side,
105 I will sustain the objection to this one.

* * * *

THE COURT: You have no objection to it being --
106 MR. RUBENSTEIN: Cut out.
THE COURT: All right. He will base his testimony on the other three.

* * * *

(Whereupon counsel resumed their places at the trial table and the following proceedings were held:)

BY MISS LINDEMANN:

Q. I show you Government's Exhibit 11, 12 and 13, for identification, and I ask you if those are the documents which you have taken from the file jacket of the Defendant Galloway? A. They are.

Q. And is that jacket kept in the regular course of the business of the D. C. Jail? A. That is right.

Q. What are those documents, sir? A. Explain each one of them?
This is --

107 THE COURT: Not that one.

BY MISS LINDEMANN:

Q. Eleven, 12 and 13, sir. A. Exhibit No. 11, this is a request to the record clerk from a William Galloway, 135789. Do you want me to read the contents?

THE COURT: Simply a request.

BY MISS LINDEMANN:

Q. Just tell us generally what they are. A. This is a request slip from the inmate cell block to the record clerk in the record office.

Q. What is the date on that, sir? A. The date is May 21, 1961.

Q. And is that signed and how is it signed? A. Signed, William Galloway, 135789.

Exhibit No. 12 is request to the classification officer, dated May 3, 1962, and has Inmate William C. Galloway's name on the top.

Exhibit No. 13 is request to the classification officer, again, dated May 20, 1962, signed, William C. Galloway, 135789.

Exhibit 14 --

Q. No. A. Oh.

108 MISS LINDEMANN: Your Honor, at this time the Government asks that Exhibits 11, 12 and 13 be received in evidence.

THE COURT: They will be received.

MR. RUBENSTEIN: If Your Honor please, the objection is noted.

THE COURT: Yes, the objection is noted, and the Court has overruled the objection.

* * * *

CROSS EXAMINATION

BY MR. RUBENSTEIN:

* * * *

109 Q. All right. Do you have any other samples of his handwriting other than those which have been brought out at this time? A. Yes, the forms on this side here.

Q. Any letters? A. These release slips I have right here.

Q. This is when I visited him. His signature was then placed on it? A. That is right.

Q. Now, in connection with these Exhibits 11, 12 and 13 --

* * * *

Q. -- these release slips. At the moment I am addressing myself to Exhibit 12. That, apparently, is a request to have a telephone call made. Must the inmate at the jail fill out a formal request for every request he wishes to make? A. No.

Q. Formal request slip, that is. A. No, not every request. This 110 is for a phone call. Inmates are not allowed to use an outside phone. That is the reason for this.

Q. And if they wish to see some books? A. That is right. Any law books, they would have to request, because these are locked up under lock and key.

Q. And to find out anything concerning his case or his status in the

jail, he would have to sign a request for that? A. That is right. Wrote to Mr. Mack for this.

* * * *

WILLIAM J. CARR

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

111

DIRECT EXAMINATION

BY MISS LINDEMANN:

Q. Officer, would you tell us your name and your duty assignment?

A. William J. Carr, Detective Bureau, Baltimore City.

Q. How long has that been your assignment? A. Twenty-four years.

Q. Will you tell us what your duties are in that assignment? A. I am in the Bureau of Identification, fingerprinting and photographing.

Q. At the request of Government counsel, did you bring certain documents with you today? A. Did I bring certain documents?

Q. Yes, sir. A. Only our fingerprint card. Is that what you mean?

Q. Did you bring a document with you today, sir? A. Huh?

Q. At my request, did you bring something with you to Court today?

A. That is right.

Q. And is that document which you brought with you a document which is kept in the regular and ordinary course of the business of the Baltimore Police Department? A. That is right.

112 Q. And is it within your custody, sir? Is the document kept within your custody? A. It is.

Q. May I see the document?

MISS LINDEMANN: May this be marked as Government's Exhibit 15, for identification, please.

THE CLERK: Government's Exhibit 15, for identification.

(Whereupon Baltimore fingerprint card of Defendant was marked Government's Exhibit No. 15, for identification.)

MR. RUBENSTEIN: May we approach the bench, Your Honor?

(Whereupon counsel approached the bench and the following proceedings were held:)

MR. RUBENSTEIN: Again, Your Honor, we have a signature with fingerprints. This, on its face, shows Police Department, City of Baltimore -- identification -- this has a crime reference, date of arrest.

* * * *

114 THE COURT: What I assume you are trying to do is prove this signature, William C. Galloway --

MISS LINDEMANN: As a known signature.

THE COURT: -- is the signature of this Defendant.

MISS LINDEMANN: Yes, Your Honor.

* * * *

MISS LINDEMANN: If Your Honor please, if defense would be willing to stipulate that this was Mr. Galloway's signature, then we would be willing to eliminate the rest of the card and just use that signature portion of it.

THE COURT: He won't do that, I gather.

MR. RUBENSTEIN: I can't.

THE COURT: You want to prove Galloway's signature.

MISS LINDEMANN: Yes, sir.

* * * *

115 THE COURT: It would seem to me that you could have this part of the card covered over so that the jury would not see this part. Merely relate the fingerprints to the signature for the purpose of proving the signature. I don't mean permanently covered over, but covered over for the purpose if the jury wants to look at the exhibit, that part which shows a prior arrest in Baltimore would be blocked out. I see no reason why it shouldn't be done.

Do you follow me?

MISS LINDEMANN: Yes, Your Honor.

THE COURT: You don't need to do it now because the jury is not going to look at this now, but before it is finally received.

MISS LINDEMANN: We will have like a mask made.

THE COURT: Have a mask cover it, so only the signature and the

fingerprints are visible, and the rest of it is covered over.

With that understanding, I will overrule the objection.

MR. RUBENSTEIN: Very well, Your Honor.

116 * * * *

(Whereupon counsel resumed their places at the trial table and the following proceedings were held:)

BY MISS LINDEMANN:

Q. Officer, I show you Government's Exhibit 15, for identification. Would you examine that, please. Is that a fingerprint card? A. That is.

Q. Did you take that card, sir? A. I did.

Q. Did you take the fingerprints on that card? A. I did.

Q. Did the person whose prints you took on that card sign that card? A. Yes, ma'am. I did.

Q. Did the person --

THE COURT: You say, you did. Did the person sign it?

BY MISS LINDEMANN:

Q. Did the person whose prints are on that card -- A. Wait a minute.

THE COURT: The person whose fingerprints are on that card, did that person sign it?

THE WITNESS: That is right, yes, sir.

117

BY MISS LINDEMANN:

Q. Did he sign that card in your presence? A. He did.

Q. Can you tell us whose fingerprint card that is? A. William Charles Galloway.

Q. Do you see William Charles Galloway in this courtroom today? A. I do.

Q. Can you come down from the stand and touch William Charles Galloway on the shoulder?

(Whereupon the witness left the stand.)

A. This man here (Witness touched Defendant.)

Q. Take the stand, please.

(Whereupon the witness resumed the stand.)

* * * * *

BY MISS LINDEMANN:

Q. Is the Defendant Galloway, whom you have just identified for His Honor and the ladies and gentlemen of the jury, the man who signed that fingerprint card in your presence? A. He did.

118 MISS LINDEMANN: Your Honor, I ask that Exhibit 15 be admitted in evidence.

THE COURT: It will be received, subject to the ruling of the Court.

(Whereupon Government's Exhibit No. 15 was received in evidence as designated by the Court.)

* * * * *

CROSS EXAMINATION

BY MR. RUBENSTEIN:

* * * * *

Q. Can you tell us, sir, why the signature has only, "W. C." if the name is William Charles? A. We leave him sign -- as the card says, his signature on there. We let them sign their signature, regardless of what name we have them under as their signature.

* * * * *

122 MISS LINDEMANN: Your Honor, first of all, I would like to say Government's Exhibit 15 has been introduced in evidence, this being the fingerprint card of William Galloway at the Baltimore Police Department. We will no longer then need the fingerprint card from the D. C. Jail, if this is admitted in evidence as a known signature of William Galloway.

THE COURT: It has been received.

MISS LINDEMANN: It has been received, Your Honor?

THE COURT: Yes.

MISS LINDEMANN: Now, the officer from Baltimore --

THE COURT: Let me get something straight. You don't need the fingerprints --

MISS LINDEMANN: Don't need them any longer, Your Honor.

THE COURT: Because you have established the authenticity of this signature.

MISS LINDEMANN: That is correct.

THE COURT: So you don't need to prove it by way of a fingerprint card.

* * * *

124-5

JAMES T. MILLER

126 was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS LINDEMANN:

Q. Officer, will you tell us your name and your duty assignment?

A. My name is James T. Miller, M-i-l-l-e-r. I am the Chief Questioned Document Analyst for the Metropolitan Police Department, Washington, D. C.

* * * *

128 Q. I show you now, Officer, Government's Exhibits 11, 12, 13 and 15, which bear the signatures of the Defendant William C. Galloway, and I ask you, sir, if you have ever had occasion to examine those documents?

A. Yes, I have. I have examined all of those documents also.

Q. Have you had occasion to compare the signatures on the three checks and the writing on the two registration cards with the signatures on Government's Exhibits 11, 12 and 13, the three requests to the District of Columbia Jail, and the signature on Government's Exhibit 15, the fingerprint card from Baltimore? A. Yes, I have.

Q. Have you formed an opinion as to the writer of those various signatures? A. I have.

129 Q. Can you tell us what your opinion is? A. Based on the examination of the two registration cards from the hotels, Government's Exhibits 1 and 5, and of the three checks, Government's Exhibits 7, 8 and 3 -- an examination of those documents, comparing them with the three requests from the District Jail here, and the signature on this fingerprint card -- comparison was made, and as a result of that comparison, I have identified the writer of the four known specimens as being the writer of the entire registration card for the two hotels, that is,

Government's Exhibits 1 and 5, the entire face of Government's Exhibit 8, and the signature, W. C. Galloway, on Government's Exhibit 7, and the words, "Four Hundred and Ninety two and 96/100," the figures in that same amount, and the signature of the maker, W. C. Galloway, on Government's Exhibit 3.

* * * *

Q. Now, in connection with that examination, sir, did you make any exhibits? A. I did, yes.

Q. Did you bring those exhibits with you in Court today? A. Yes,
130 I have them with me here in Court.

(Whereupon the documents were submitted to counsel.)

MISS LINDEMANN: Your Honor, at this time the Government asks these exhibits be marked as Government's Exhibit 16, for identification, and may we mark the others, then, 16-A, B, C, D?

* * * *

THE COURT: Just give them one number. They are all the same, aren't they?

THE WITNESS: Yes.

THE COURT: Just mark it Exhibit 16, and have it understood these others are copies of 16.

* * * *

BY MISS LINDEMANN:

Q. I show you Government's Exhibit 16, and I ask you if you can tell us what that consists of? A. Government's Exhibit 16 is a contact print of a negative which I made myself. It is a twofold document. There
131 will be two photographic prints. One will be uppermost, as you look at it, and will have the letter "K" on that document in red. The lower one will have "Q" on it.

The "K" is a copy, a true and exact copy of the Government's Exhibits -- the known writing of the Defendant -- 13, 12, 11 and --

Q. 15? A. -- is it 15? And 15. These appear as known writings of the individual, and they are on the upper of these two photographs, as

you would look at them.

The lower one marked "Q" is a copy of the five questioned documents in this case, the two hotel registration cards, Government's Exhibit 5 from the Burlington, 1 from the Statler, Government's Exhibit 3-A, the check to the Statler, Government's Exhibits 7 and 8, the checks to the Burlington. They appear copied exactly on the bottom.

MISS LINDEMANN: Your Honor, at this time may I have the Court's permission to distribute identical copies of this exhibit to the jury?

THE COURT: Are you offering this in evidence? Have you offered this in evidence?

MISS LINDEMANN: I offer it in evidence at this time.

132 THE COURT: Very well. It will be received and you may distribute them to the jury.

* * * *

(Whereupon Government's Exhibit No. 16 was received in evidence.)

(Whereupon copies of the exhibit were distributed to the jurors.)

* * * *

BY MISS LINDEMANN:

Q. Using that Exhibit, Officer Miller, will you tell us the basis of your opinion concerning the handwriting that you have examined?

A. If you ladies and gentlemen will look at these photographic prints which have been distributed to you, again, to be sure that you understand what we are speaking of, the known is on the top. This is the writing of the individual known to be his own writing. This is marked with a red, "K". The writing on the lower sheet is a photographic copy of the checks

133 and the hotel registration cards.

* * * *

As I explained a few moments ago, on two of these Government's exhibits, the checks -- the one to the Statler, Government's Exhibit 3-A, that check appears in the amount of \$492.96. It is just below the center, down.

Part of that check, I do not identify Mr. Galloway as the writer of.

Only in part. And I have only reproduced the part that I identify him as writing.

On Government's Exhibit No. 7, which is the second, "W. C. Galloway" here on the lower piece, I only identify him on that check as being the writer of the maker's name, and that is all that is reproduced there.

* * * * *

134 Now, when I first examined this material, I took all of the questioned material, that is, the three checks and the two hotel registration cards, and I examined them to see if all the writing that appeared on those three checks and on the two registration cards was by one writer.

I took into consideration the size, the slant, the skill of the writer, his ability, his line quality, and the method in which he formed his various letters.

This examination disclosed that he had written all of the material normally signed by the party checking in on the Statler card, that is, Government's Exhibit 1. He had registered in, put the address and the city and state and Universal Plastics on the Burlington registration card. That is Government's Exhibit 5.

Government's Exhibit 8, the check to the Burlington -- this is the one that appears on your questioned part here on the top -- he had written the entire face of that check. But on Government's Exhibit 7, it was my opinion that Mr. Galloway had only written his name as maker on that check. The maker's signature, the payer of the check. That is the second one that appears here.

The examination then disclosed on the third check, the one to the Statler, which is Government's Exhibit 3-A here, and the one third down 135 on your questioned material, in the darker area, this one, he only wrote the part which actually shows here in this photographic reproduction, plus the amount \$492.96 in figures.

Now, after I was satisfied as to the material appeared on all of these questioned documents and had eliminated in my mind some of the writing, I looked at the known writing that we had of Mr. Galloway.

These are the pieces that are reproduced on the upper section of the photographic exhibit that you hold.

* * * *

136 Mr. Galloway has a number of things that are somewhat different and unusual in his writing, things that set him apart from other people.

* * * *

137 Now, I examined these individual characteristics of Mr. Galloway, and to give you an insight into how I would think when I would go through these things, I will point some things out to you that are representative of the things that I would be taking into consideration as I went through here, things that would show to me, indicate very strongly to me that Mr. Galloway was the writer, and would make me positive enough that he was the writer to identify him positively as the person who had written this material.

We will begin on the questioned check. This is on the lower of your two sheets, the questioned material.

We will start at the word, "May" which is the first thing that you see there. If you notice, the loop on the beginning of the "M" is a very long look. It, you might say, hangs down or goes down toward the base line, roughly, four times as far as a loop that would normally be taught in a copybook.

Think back now to what a normal "M" would be. Now this "M," if you will look up on the known material and come down about an inch from the top, you will see, "Mr." written. That same "M" with that very same

138 low loop that introduces the letter shows in that material.

THE COURT: In Mr. Dickey?

THE WITNESS: Yes, Mr. Dickey. I am speaking only of the "M".

THE COURT: I understand.

THE WITNESS: Right. To go across -- I am just going to hit -- I am not going to work with every single letter, because this would take quite a long time, but I will hit the high spots as we go across.

Go across to the number "6" that appears after the date, "1961," on that same line.

THE COURT: You are now getting back to the check, are you?

THE WITNESS: Yes, I am back on the check. Go across to the "6."

If you will look on the top piece, about half way down, you will find a thing that says, "Date of further hearing." There is a date, "4/27/62." If you will look at the "6" in the "62," you will notice that the writer has a tendency in both of these cases now to come down to make a rather flat base to this number, and instead of making a loop that is normally nearly as large as his lower case "a" would be, his written "a," he makes a very small loop way out on the end. This loop doesn't come anywhere near

139 his down stroke or base line. This would be more normal to trace back over to that base line. This little tiny loop separated way out to the right of the base line is unusual.

You go back to the check again, to where the name of the bank is filled in, The Equitable Trust Company, and look at the two "t's," capital "t's," in the word, "The" and in the word "Trust," and you will notice that both of these "t's" are very light.

I believe the only "t" that appears in the known writing above would be in the very center of your upper sheet, about two inches down, in the words, "Thank you." Capital "t" appears there. Has the same type of a stem construction. This would be the rise from the base line, the drop back to the base line, as a lower case "t" would have, being open, very much like the letter "l," with the very reasonably large circled loop in the front, and the stroke coming back across the top of that letter, ending well over to the right.

MR. RUBENSTEIN: If Your Honor please, before the officer continues, might counsel approach the bench?

THE COURT: Very well.

(Whereupon counsel approached the bench and the following proceedings were held:)

140 MR. RUBENSTEIN: Were these exhibits not offered for samples of his handwriting as to his signature?

MISS LINDEMANN: Excuse me, sir?

MR. RUBENSTEIN: Were these -- these requests from the District Jail were on the question of signature.

MISS LINDEMANN: I believe that the Exhibit 15, the fingerprint card, was offered for only his signature and his fingerprints, and that the exhibit, the fingerprint card from the District Jail was offered only for the fingerprint and not for the signature; and that Exhibits 11, 12 and 13 were offered and received as such. There was no limitation. They were offered as known handwriting.

THE COURT: As known handwriting, that is my recollection.

MISS LINDEMANN: As to the entire document.

THE COURT: Yes.

MISS LINDEMANN: Not just as to the signature.

THE COURT: Yes.

* * * *

142 (Whereupon counsel resumed their places at the trial table and the following proceedings were held:)

BY MISS LINDEMANN:

Q. Would you continue, please, Officer, with your explanation to us? A. Just below the name of the bank, The Equitable Trust Company, Baltimore, Maryland appears. Again, you see the "M" we spoke of a while back; and this same reasoning applies to the letter "M" in this case. You also see the capital letter "D" in "Maryland." Here it is written "M.D."

This same "D" or very similar "D" appears in the words, "Mr. Dickey" that we referred back to just a moment ago, in the known. This is about an inch down in the upper left-hand corner. You notice the "D" in "Dickey" is very similar, stroke down, rather straight, and loop sitting out to the left of the down stroke, traced back over. It is a rather squat and wide "D," the loop being to the right of that down stroke, not closing it up, being -- rather approximating a round circle.

Dropping down again to the "g" in the questioned again now, we go to the word, "Burlington," the name of the hotel. I am not going to attempt to identify every letter here, because there are letters appearing in the questioned material that I did not have available to work with up here

143 in the known material. Necessarily, there are some letters that we won't be able to demonstrate likeness.

In the "g" in Burlington -- this is in the lower half, questioned, in the first check, the word, "Burlington" -- if you will look about three-quarters of the way down on the known specimen, on the line that starts with, "As soon as you have time, there is still more that you should know," and so forth -- we will be speaking now of the lower part of this "g," the loop that extends down below the line. This is very similar in "g's," "q's" and "y's," letters that extend below the base line. You will look at that same tendency to make rather a triangular loop down at the bottom. In other words, it isn't the elongated loop, very much like a drop of water would be or a pendant. It is a triangular shape, rather triangular shaped loop down there below the line.

Again, we see the "6" on that same line, in the amount "\$64.91." If you will look at the "9" on that line, where the amount "64.91" appears, you will see that the "9" again is formed in a rather unusual way. Ordinarily, we will say you have a bulb on the top of the "9", or the looped area does not extend or does not stay above the top of the staff that it might sit on. It normally -- if you would picture a loop hanging on the left-hand side of that stem.

144

In this case, this writer, without closing that loop, forms it and makes it all of the loop above the highest point of the down stroke that he makes. Very unusual. It is as though he had a "7" that rounded off on the top rather than the normal formation of the "9."

The next line down, in the word, "Sixty," -- this is on the check -- this "S" compares very favorably with the third line up in the known material where a capital "S" is used in the word, "Sir." Starts well off to the left, with a very small hook, if you will notice, just above the base line there.

Incidentally, that same "S" appears in some of the other questioned material at the bottom. If you will look at the hotel registration down on the bottom in the lower left-hand corner, where the address, "615 West Spring Street," appears, you will see the same "S" starting out to the left with a very slight hook and going up in a rather graceful line, and the down stroke rather than being straight after this upper hook is a very

graceful compound curve coming back down to the base line.

Going back to the first questioned check again, this would be the one to the Burlington Hotel, in the signature, "W. C. Galloway." First, let me take you one line above that to the word, "and." See the "d" in

145 "and." This is an unusual formation of a "d" that is peculiar to this writer. His "d," he forms his first loop, then in going up well above the base line for his second loop, instead of coming back down and meeting that first loop, as would be a normal-taught system "d," he fades way over to the right in the normal flow of his writing and flows away from that first loop, making a very abnormal "d," giving a very large space between that first bulb and down strike. "D's," ordinarily, with most writers, do touch. You will see that same tendency about two-thirds of the way down on your known material. Up top is a typed-in area, "Please call," and phone number, and then the words, "S. David Rubenstein." You will notice the "D" in Mr. Rubenstein's name there. And if you will drop down below that, three lines, in the word, "should," you see another "d" with the same tendency -- not to close up that lower, that first loop there when he comes down, but to fade off to the right, leave that unclosed, as though it were maybe a "c" letter rather than a "d."

The signature, "W. C. Galloway," that appears on that check, and on all of the other questioned material -- appears one, two, three, four, five times -- the "Galloway," -- I won't go through this letter-for-letter, but I will hit a few of the letters for you. You, of course, will be looking

146 at some of them yourselves.

The "G" is an illustration. Mr. Galloway shows in the questioned material, down at the bottom, a slight variation which is normal for any writer in his "G's." In the first check we have been looking at, he shows the same little hook at the start. He shows one loop up at the top and one at the first point, and then a sharp point on the second -- on the second side at the top.

Shows that in the next one right below it.

On the third one down, he shows two loops, a loop on both of these upper places.

If you go up into the questioned material up at the top, you see the same thing demonstrated. In the very upper left-hand corner of the known material, you see the double looping. On the same piece of paper, written at the very same time, you see the loop on the left and the point on the right.

This same piece of paper up there at the top, just to the left of that, a little inserted signature, you see the loop, and the sharp point. If you drop down below that to the right, next to where the piece was cut out, you see the double looped "G" again.

So you see a habit change of a writer appearing in his known writing and then that same habit appearing again in the questioned material.

147 It is an agreement of variation that is normal with that writer, and that same variation is appearing in both the questioned and known material.

The "C" that is in Mr. Galloway's name is introduced by a very small loop at the top. This "C" I am speaking of now is in the first questioned check -- I should have called you back to that -- and on the dark copy of the registration down at the bottom, that would be the one in the lower righthand corner.

That same "C" is normal to Mr. Galloway and appears in all of his signatures at the top, with the exception of probably the lowest one down here in the lower right-hand corner of the note.

A few of the highlights, so we don't carry this thing too long for you, ladies and gentlemen, is to drop down in your questioned material to the lower left-hand corner to the registration card that is there. Look at the "U" in "Universal Plastics." Refer back up to the known writing up at the top, about half way down, in the middle, you see the words, "Hold for U. S. Marshal." Look at the "U" that appears in "U. S. Marshal." Very, very similar to the "U" in "Universal Plastics" down at the bottom.

Now, just above the words, "Universal Plastics," the words, "Cookeville, Tennessee." The "k" in Cookeville is another very obvious

148 likeness to his writing. That same "k" appears about three-quarters of the way down in the line that starts, "more that you should know," the "k" in "know."

And so forth. This same line of reasoning utilized in this same way is applied to all of the letters in both of these exhibits.

Then all of the pros and cons, all of the likenesses and similarities and dissimilarities are compared, and then based on what that investigation, what that thorough perusal shows, I have arrived at the conclusion that the person who wrote the known material in this upper sheet is also responsible for writing all of the material that I have photographed on this lower sheet.

The man who wrote the information on these known pieces here, Government's Exhibits 11, 12, 13 and 15, is the same person who wrote the material that I have photographed off of Government's Exhibits 1, 3, 5, 7 and 8.

THE COURT: Specifically, the signatures on the three checks, is that right?

THE WITNESS: Yes, very definitely all three signatures.

* * * *

149 [CROSS EXAMINATION]

BY MR. RUBENSTEIN: * * *

Q. Officer Miller, I would ask one question regarding the exhibits which you have studied.

If I may use the same sheet that the ladies and gentlemen of the jury have in their possession, on the known samples of the handwriting, as you have identified it, it appears to me -- not being an expert, perhaps

150 I am not reading it correctly or looking at it correctly -- that the signature in "Galloway," the "G-a" is always tied together, but at no place else is there any tie in the word, "Galloway." Wouldn't this be sort of a customary thing? I mean, does not a person normally just continue this habit of connecting letters? A. Ordinarily, a person would, and this is one of the things that I mentioned, I took into consideration the

similarities and the dissimilarities that appear in all of the documents.

Now, from examining hundreds of thousands of documents over this time, I would like to say this: We many times have a formal signature which we use, and a way in which we write our name. That is to say, if we write our name on an important paper or, as an illustration, a personal check, or an official paper, where we would be indebting ourselves, or something of this nature, we have a formal signature, which in some cases, with some individuals is quite different than the signature which they normally use.

Now, all of these signatures with the exception of one, and that one is broken -- if you will look at the "W. C. Galloway," which is inserted there on the left about two inches down, all are connected, the "G" and the "a" except that one, which is, "W. C. Galloway." This is

151 the same situation which we find in all of the questioned material which appears at the bottom. So it would seem that the writer, W. C. Galloway, on the known there, when he writes, "W. C. Galloway," would not have that tendency to connect the "G" and the "a"; but when he makes his full, complete signature, "William C.," he has a tendency to connect it.

This compared in my eyes when the one time we know of when he did write, "W. C.," he did not connect, and he did not connect on any of the questioned material when he did write, "W. C." So there is a difference between writing his name and signing a formal signature.

Q. Now, I believe you stated that there were several points of dissimilarity which you found in connection with your examination of these documents.

I presume that I am correct that you feel that there are more similarities than dissimilarities which have led you to your conclusion that the handwriting is of one person? A. That is right. I would say there are far, far more similarities than dissimilarities, a great preponderance of similarities. There is actually no real attempt to disguise here at all, I would say. It is very normal writing of an individual.

152 Q. Well now, Officer, I have one problem in trying to assimilate everything. Perhaps I am not acquainted enough with handwriting. But

the testimony that was previously brought forth before this Court by the persons who received the checks was to the effect that W. C. Galloway prepared the checks and handed them over. And yet, in your own findings, the checks, per se, that is, one check, the one on Equitable Trust Company, it is the first one, the check of May 21, you identify in its entirety, the second check, only the signature, and the third check, a portion of the check, plus the signature.

MISS LINDEMANN: I object, Your Honor, I don't believe that was the witness' testimony.

MR. RUBENSTEIN: I will be glad to pull this out, because these were specific questions that I had.

THE COURT: Of course, I think the jury's recollection would be controlling; but it is the Court's recollection that as far as the first check is concerned, the one for \$64.91, the testimony was that the Defendant produced a check for a hundred dollars, which the hotel -- am I right about that?

MISS LINDEMANN: I am sorry, Your Honor. I meant I did not believe that that was the testimony of the witness now on the stand.

153 THE COURT: I understand. That is not the testimony of this witness. You mean testimony of other witnesses was to the effect that the checks had been produced by the Defendant in their entirety?

MR. RUBENSTEIN: That is right.

THE COURT: My recollection is, as far as the check for \$64.91 was concerned, the person presenting the check originally presented a check for a hundred dollars, which the hotel was unwilling to cash.

MR. RUBENSTEIN: Correct.

THE COURT: And he then got another blank check and filled it out for \$64.91, which, of course, would indicate that in that instance that check in its entirety was written in the handwriting of the person presenting the check.

As to the other two checks, it is the Court's recollection that the person presenting the check presented the check as completely made out. Now, whether he made it out himself or someone made it out for him, there was no testimony one way or the other.

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Washington, D. C.
June 21, 1962

* * * * *

156

JAMES T. MILLER

resumed the stand and testified further as follows:

* * * * *

MR. RUBENSTEIN: May it please the Court, ladies and gentlemen, good morning. I believe as we left off yesterday afternoon, there was a question that I had propounded relative to the preparation of these various checks, and I believe we had almost reached a point of slight disagreement as to our recollection.

I took the liberty, Your Honor, of requesting the court reporter to check back to the testimony of Mr. Hubert Moore of the Burlington Hotel.

THE COURT: Mr. Hubert who?

157 MR. RUBENSTEIN: Mr. Hubert Moore.

THE COURT: He was the cashier.

MR. RUBENSTEIN: He was the front office cashier of the Burlington Hotel, Your Honor.

I wonder, just as a basis for the questions that I am now about to propound to the officer on the stand, whether that portion of the evidence might be read again, so that we would start from the same point?

THE COURT: Do you have any objection to that?

MISS LINDEMANN: I do, Your Honor, yes, sir.

THE COURT: Yes. I don't think it is a very orderly thing to pick out any particular sentence.

MR. RUBENSTEIN: Very well, Your Honor.

THE COURT: Or statement in the record. I think the jury will have to take the testimony as a whole rather than some particular excerpt.

MR. RUBENSTEIN: Very well, Your Honor, thank you.

CROSS EXAMINATION (Cont'd)

BY MR. RUBENSTEIN:

Q. Officer Miller, I now show you Government's Exhibit 3-A, which was the counter check given to the Statler-Hilton Hotel.

In the exhibit which the ladies and gentlemen of the jury have before them, I believe only a portion of this check appears. Now,
158 can you tell us as to that portion of the check which is not on the exhibit, namely, the name of the bank, the date, the address, and "Pay to the order of," the information that follows those on those various lines -- could you tell us whether or not that handwriting is the same handwriting as appears on the portion of the check that you have indicated is in the handwriting of W. C. Galloway? A. In order to answer this now, I will further describe this, because you don't have this material in front of you.

This check payable to the Statler is dated -- this is pen written on this check. It is a blank, counter-type check. So that the name of the bank is not in printing. It is written, "May 31, '61, First National Bank of Cookeville, Cookeville, Tennessee. Pay to the order of Statler-Hilton Hotel."

You do not have any of that material on your exhibit. Also, down at the bottom is an address, "615 West Spring Street, Cookeville, Tennessee."

Q. Now, will you answer the question, sir? I don't mind your telling the jury to what you are making reference, but is this the same handwriting? A. This is the part that is not on yours. This, in my opinion, is not written by the writer of the words, "Four Hundred and Ninety-two and 96/100," and the name, "W. C. Galloway," as
159 appears on your exhibit. In my opinion, it is another writer.

Q. Thank you.

Now, on Government's Exhibit No. 7, the writing on the check as to the date, the name of the bank, which is, "The Equitable Trust Company, Baltimore, Maryland, Pay to the order of Burlington Hotel" in the amount of \$133.16, which is then written out on the line that ends up with

the word, "Dollars" as to this exhibit, I believe, sir, you stated that you recognized or identified the signature but not the remainder of the writing upon the check.

Can you tell us whether in your opinion the writing other than the signature line is the same handwriting? A. In my opinion, the other writing, which you have just identified on that check, and that would be appearing above the "W. C. Galloway," that is the second signature on your questioned area, about half way down the middle, this writing that the defense attorney has identified above that line was written by another party other than Mr. Galloway; and it would be the same party who wrote part of the material on the Statler check.

* * * * *

164

REDIRECT EXAMINATION

BY MISS LINDEMANN:

Q. Officer Miller, directing your attention to the Exhibit 16, to the letters, "Ga" -- first directing your attention to the known handwriting of the Defendant Galloway -- would you tell us, speaking specifically of which "Ga's" are connected and which "Ga's" are not connected, which are in pencil, and which are in ink? A. On the known writing of Mr. Galloway, this would be the upper part of the exhibit which you have in front of you, the name, "William C. Galloway," appears one, two, three, four times, I believe. The full name, "William" is written 165 out in all four of these cases, and in all four of these cases, the name "William" is pencil written.

The name, "W. C. Galloway," appears -- this is with the two initials, "W. C." -- this appears in only one case. In this case, the writing instrument was a ballpoint pen.

As to the questioned material, which you have in the lower part of your exhibit, the signature on the three checks and the two hotel registrations are all, "W. C. Galloway," and in all of those five instances, the writing instrument is a ballpoint pen.

Q. Now, sir, can you tell us what the basis is for your opinion

that the handwriting in the known handwriting of the Defendant Galloway is the same handwriting as that in the questioned documents as pertains to the connection or non-connection of the letter "G" with the letter "a" in the name, "Galloway"?

Is my question clear, Officer Miller? A. Not exactly, no.

Q. Let me ask it again, sir. In the known handwriting of the Defendant Galloway, you have told us that the name "Galloway" appears four times in pencil, is that correct, sir? A. That is correct.

166 Q. On those four names, are the letters "G" and "a" connected or unconnected? A. They are connected in all four of those instances.

Q. And in all four of the penciled instances is the name written, "William" or is it written "W"? A. The full signature is written, "William C. Galloway."

Q. Now, sir, how many instances of ink writing do you have in the known handwriting? A. Only the one.

Q. And in that instance, sir, is it written, "William" or is it written "W"? A. It is written, "W. C." as it is on the checks in question.

Q. Now, in that instance, sir -- and is that the handwriting in the center left-side of the known handwriting? A. Yes, it is about one-third of the way down on the left.

Q. In that instance, I ask you if the "G" and "a" are connected? A. The "G" and the "a" in that one ink written specimen are not connected.

Q. Now, sir, could you relate that to the questioned handwriting?
167 A. Yes, This, as I believe I explained yesterday, is probably not what would be termed the formal signature of Mr. Galloway. It is probably the way he writes his name rather than the way he might sign his formal signature. I have expressed that opinion yesterday; and I feel that that is what has happened on these instances of these three checks and the two registration forms: That Mr. Galloway wrote exactly the same style, made exactly the same break between the "G" and the "a" as he did on these five questioned documents, as he did when he wrote

this one signature or one specimen of his name that we are speaking of with the ballpoint in the known writing. The same writing habit manifested itself in both cases. When the initials were used, there was a break between the "G" and the "a."

* * * *

170 MR. RUBENSTEIN: Now, Your Honor, in going forward with the defense of this case, I have in Court -- not in the courtroom, but in the Court -- two members of the Metropolitan Police Department, one of whom was identified by the Government, a Sergeant Grove, of the Detective Bureau, and the other, Lieutenant Winters, also of the Metropolitan Police Department.

The testimony which I would seek to adduce from them may be very delicate information in that I am seeking to introduce on this question of identity certain facts relative to the whereabouts of the Defendant during August of 1961. At that time, he was actually incarcerated. I believe he was incarcerated in connection with a warrant from Kansas. The arrest occurred on or about August 8, 1961.

While he was in jail, and according to the records of the Police Department, they sent a notice to this jail on August the 23rd of 1961. So, obviously, he must have been at the jail, because according to their records, that is where he was and that is where they addressed their message.

The Police records further go on to indicate more in connection with their attempt to detain him out there. Lieutenant Winters, from the Fugitive Squad of the Metropolitan Police Department, has some
171 detainers here that were issued by various counties in the State of Colorado that relate to offenses which occurred -- I believe my dates are correct -- August 24, August 25 and August 31 of 1961 for three certain checks signed by W. C. Galloway in Colorado, at a time that this man was incarcerated in jail.

I feel that this is very important because it has to go to the question of whether or not this man is the same man, again, who did these particular checks here in Washington, because, obviously, there

is somebody else who is not in jail who is using the name.

THE COURT: You mean you are going to try another case?

MR. RUBENSTEIN: No, Your Honor. I am merely going to try to establish the question of reasonable doubt as to identification.

THE COURT: That is certainly far afield from this case.

MISS LINDEMANN: Your Honor, if I may, the Government would object to the admissibility of this evidence. First of all, on the ground that these documents that you speak of merely allege that on or about the 25th of August, as I understand it, somebody wrote checks, signing them, "William C. Galloway."

172 MR. RUBENSTEIN: Yes.

MISS LINDEMANN: I feel that is sheer speculation to assume that, a, Mr. Galloway was not the person who wrote those checks and that, therefore, b, the possibility that another person, who might write bad checks in Colorado, signing the name, "William C. Galloway," could possibly be the man who wrote, "William C. Galloway" in this instance in the District of Columbia.

In addition to that, we have no evidence before this Court that William C. Galloway was in fact incarcerated on those dates. The warrant that you speak of would be inadmissible as hearsay. The detainees you have reference to would be further inadmissible as hearsay. The officer has no personal knowledge as to these facts. That the informations are also not filed in court and are inadmissible as hearsay; and that the entire line of defense is sheer speculation.

MR. RUBENSTEIN: If it please the Court, I would go further. Detective Grove is the man who initiated the investigation from the District of Columbia. In his records, in his police file, he has a copy of the teletype which he sent to the jail on August 23 of 1961. This is no speculation as to where this man was.

THE COURT: I will sustain the objection. I think they are irrelevant to the issue before the Court.

* * * * *

173 MR. RUBENSTEIN: * * *

If I might make this other comment. The only other item that I would be in a position to offer on behalf of the Defendant, again on the question of identity, is the telephone directory for the Metropolitan Washington, D. C., showing that there are other W. C. or William Galloways in this area.

* * * * *

175 THE COURT: I will sustain the Government's objection.

* * * * *

[Filed June 21, 1962]

[VERDICT]

On this 21st day of June, 1962, came again the parties aforesaid, in manner as aforesaid, and the same jury as aforesaid in this cause, the hearing of which was respite yesterday afternoon; whereupon the said jury after hearing further of the evidence and the instructions of the Court, alternate jurors, James Hailes and Patrick H. Kenny, are discharged from further consideration in this case; and thereupon the jury retires to consider their verdict.

The jury returns into Court and upon their oath say that the defendant is guilty as indicted.

The case is referred to the Probation Officer of the Court and the defendant is remanded to the District of Columbia Jail.

By direction of

JOSEPH C. McGARRAGHY
Presiding Judge
Criminal Court # 1

* * *

* * *

[Filed July 13, 1962]

JUDGMENT AND COMMITMENT

On this 13th day of July, 1962 came the attorney for the government and the defendant appeared in person and by his attorney S. David Rubenstein, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of Violation of Title 22, D. C. Code, Section 1301 Obtaining Property by False Pretenses as charged in counts one, three, and five and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Four (4) months on count one; Four (4) months on count three; Four (4) months on count five; Said sentence by the counts to run consecutively.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Joseph C. McGarragh
United States District Judge

[Filed July 13, 1962]

**ORDER DENYING LEAVE TO APPEAL
IN FORMA PAUPERIS**

Upon consideration of defendant's application for leave to proceed on appeal without prepayment of costs and affidavit in support thereof, the Court being of the opinion and hereby certifying that said application is frivolous, without merit and not taken in good faith, it is, this 13th day of July, 1962

ORDERED that said application for leave to proceed on appeal without prepayment of costs be, and hereby is, denied.

/s/ Joseph C. McGarragh
JUDGE



BRIEF FOR APPELLEE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,430

WILLIAM C. GALLOWAY, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the District of Columbia

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
BARBARA A. LINDEMANN,
BARRY I. FREDERICKS,
Assistant United States Attorneys.

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 24 1963

Joseph W. Stewart

CURR

QUESTIONS PRESENTED

In the opinion of the appellee the following questions are presented:

1. Did the District Court have personal jurisdiction over appellant?
2. Were Counts One and Three of the indictment duplicitous?
3. Did the District Court have jurisdiction to try appellant for violation of 22 D.C.C. 1301?
4. Was the edited fingerprint card from the Baltimore Police Department properly admitted into evidence?
5. Was appellant's trial conducted in a proper manner?

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,430

WILLIAM C. GALLOWAY, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On February 12, 1962, appellant was charged in a six-count indictment with three violations of 22 D.C.C. 1301 (Unpaid Board Bill) and three violations of 22 D.C.C. 1401 (Bad Check Law). On February 16, 1962, a Bench Warrant was ordered and issued. At the time the warrant issued, appellant was in Grand Junction, Colorado. On April 18, 1962, a Warrant of Removal was issued and appellant returned to the District of Columbia and committed to the D. C. Jail. On May 15, 1962, appellant filed a motion to quash his arrest and to dismiss the proceeding against him. This motion was heard and denied on

May 25, 1962. A jury found appellant guilty as indicted on June 21, 1962, and on June 28 appellant filed a Motion for Judgment of Acquittal N.O.V. On July 13, 1962, appellant's motion was granted as to Counts 2, 4, 6 (Bad Check Counts) and denied as to Counts 1, 3, 5 (Unpaid Board Bill Counts). By judgment and commitment of July 13, 1962, appellant was sentenced to 4 months imprisonment of each of the remaining three counts of the indictment, sentences to run consecutively. On July 13, 1962, appellant filed a Motion for leave to prosecute an appeal *in forma pauperis*, which was denied by the District Court on the same day. On July 20, 1962, appellant filed a petition in this Court for leave to appeal *in forma pauperis*, which was granted on October 5, 1962. The instant appeal followed.

Pre-trial Proceedings

On December 21, 1961, a warrant was issued in the District of Columbia for the arrest of the appellant, William Charles Galloway. Appellant was being sought for violation of 22 D.C.C. 1301 (J.A. 6). On December 27, 1962, appellant was located in the Grand Junction Jail, Grand Junction, Colorado, and was placed under arrest (J.A. 6, 18, 19). On December 20, 1961, appellant was brought before the United States Commissioner at Denver, Colorado, and informed of the complaint against him, his right to retain counsel and his right to a preliminary hearing (J.A. 6, 7). At the request of appellant, the removal proceeding before the U.S. Commissioner was continued until January 2, 1962, so as to allow appellant to consult with an attorney. As of January 2, 1962, appellant had not consulted with an attorney, and the United States District Court for the District of Colorado thereupon appointed appellant an attorney. On January 10, 1962, the District Court ordered a stay in the proceeding before the Commissioner. On February 5, 1962, counsel for appellant requested a hearing to establish probable cause for removal. The hearing on probable cause was set for February 19, 1962 (J.A. 7). An in-

dictment against appellant was returned by the Grand Jury for the District of Columbia on February 12, 1962, thereby making moot the question of probable cause. A removal hearing was held before the U.S. Commissioner on February 16, 1962, at which time the Commissioner concluded that appellant was the person being sought in the District of Columbia (J.A. 12). On February 19th and 20, 1962, a hearing was held before the U.S. District Court in Denver, Colorado, to review the finding of the U.S. Commissioner recommending removal of appellant to the District of Columbia (J.A. 8). After hearing the testimony of the Commissioner who held the preliminary hearing and the testimony of the U.S. Marshal who arrested appellant, and the testimony of appellant, the District Court ordered appellant to be removed and delivered to the U.S. Marshal for the District of Columbia (J.A. 32). Appellant was committed to D.C. Jail on April 18, 1962. On May 15, 1962, appellant filed a "Motion to Quash Arrest and Dismiss Proceedings" (J.A. 33, 34). At the conclusion of a hearing held on May 25, 1962, in the District Court for the District of Columbia appellant's motion was denied and he was held for trial.

Evidence at Trial

On May 15, 1961, appellant and his wife checked in to the Burlington Hotel, located in Washington, D. C. (J.A. 5 Gov't Exhibit 5), with the intention of staying until the 19th of the month. On May 19, 1961, appellant in anticipation of leaving the hotel, gave Mr. Hubert J. Moore, clerk-cashier at the Burlington Hotel, a check for \$133.16 (Govt. Exhibit No. 7) in payment of his bill from the 15th through the 19th of May. The next day appellant decided to remain at the Burlington Hotel, and he and his wife stayed on until May 22, 1961. On the morning of May 22, appellant gave another check to Mr. Moore; this check was in the amount of \$64.91 (Govt. Exhibit No. 8) and was to pay appellant's bill from May 19th through the 22nd (J.A. 53). The checks given Mr. Moore

by appellant were drawn against the Equitable Trust Company, Baltimore, Maryland (J.A. 2 & 3) and were returned dishonored, marked "Cannot Locate Account" (Tr. 80, 85).

On May 22, 1961, appellant and his wife checked in to the Statler-Hilton Hotel, located at 16th and K Streets, N.W., Washington, D. C. (Tr. 49). On May 31, 1961, appellant paid his bill at the Statler-Hilton by check (Government Exhibit #3-A) in the amount of \$492.96 (J.A. 49). This check was drawn upon the First National Bank of Cookeville City, Cookeville, Tennessee (J.A. 4) and was also returned dishonored marked "No account as signed. Evidently drawn on us in error" (J.A. 50).

Mr. Moore, cashier at the Burlington Hotel, positively identified appellant as the person who gave him the fraudulent checks which had been signed "W. C. Galloway" (J.A. 57). The cashier at the Statler, Miss Joyce Foisy, was not able to give as positive an identification of appellant as did Mr. Moore. However, she did say that appellant looked like someone she had seen in connection with her work at the Statler-Hilton Hotel (J.A. 32). James T. Miller, a qualified expert in documentary analysis, stated that the signatures on the fraudulent checks (Govt. Exhibit #3-A, 7, and 8) were signed by appellant as maker. Mr. Miller based his observations on examination of and comparison with known samples of appellant's signature (Govt. Exhibit #11, 12, 13, and 15) (J.A. 71-72).

Appellant did not take the stand nor did he offer any evidence in his own behalf. After hearing all the evidence, the jury found appellant guilty as indicted.

STATUTES INVOLVED

Title 22, District of Columbia Code, Section 1301 provides:

False pretenses. Whoever, by any false pretense, with intent to defraud, obtains from any person anything of value, or procures the execution and delivery of any instrument of writing or conveyance of real or

personal property, or the signature of any person, as maker, indorser, or guarantor, to or upon any bond, bill, receipt, promissory note, draft, or check, or any other evidence of indebtedness, and whoever fraudulently sells, barters, or disposes of any bond, bill, receipt, promissory note, draft, or check, or other evidence of indebtedness, for value, knowing the same to be worthless, or knowing the signature of the maker, indorser, or guarantor thereof to have been obtained by any false pretense, shall, if the value of the property or the sum or value of the money or property so obtained, procured, sold, bartered, or disposed of is \$100 or upward, be imprisoned not less than one year nor more than three years; or, if less than that sum, shall be fined not more than \$200 or imprisoned for not more than one year, or both. Any person who obtains any lodging, food, or accommodation at an inn, boarding-house, or lodging-house, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at such an inn, boarding-house, or lodging-house by the use of any false pretense, or who, after obtaining credit or accommodation at such an inn, boarding-house, or lodging-house, absconds or surreptitiously removes his baggage therefrom without paying for his food, accommodation, or lodging, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the municipal court for the District of Columbia be fined not more than \$100 or imprisoned not more than six months, or both, in the discretion of said court.

Title 22, District of Columbia Code, Section 107 provides:

Punishment for offenses not covered by provisions of code. Whoever shall be convicted of any criminal offense not covered by the provisions of any section of this code, or of any general law of the United States not locally inapplicable in the District of Columbia, shall be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than five years, or both.

Title 11, District of Columbia Code, Section 306 provides:

General jurisdiction. Said courts shall have cognizance of all crimes and offenses committed within said district and of all cases in law and equity between

parties, both or either of which shall be resident or be found within said district and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States; and any one of the judges may hold a criminal court for the trial of crimes and offenses arising within the District.

SUMMARY OF ARGUMENT

1. The District Court had jurisdiction over appellant regardless of the propriety of the proceedings which brought appellant before the court.
2. Appellant, on two separate occasions, received lodging in the Burlington Hotel by fraudulent means. It is immaterial that appellant physically remained in the hotel from the 15th to the 21st of May, 1961. The only pertinent fact is that appellant committed two separate fraudulent acts. Since appellant terminated his lodging agreement on the 19th of May by paying the bill accrued to that date, his subsequent stay at the hotel precipitated the creation of a second lodging agreement extending from the 19th of May to the 21st. Appellant thereby committed two separate criminal acts, each of which is chargeable under a separate count of the indictment.
3. The District Court has jurisdiction over all crimes committed in the District of Columbia. It cannot be deprived of this jurisdiction by implication, especially when such implication would vest jurisdiction in an inferior court. The language of Section 1301 merely limits sentencing power of the Court of General Sessions and does not deprive the District Court of jurisdiction over that crime. The District Court can impose sentence for violations of 22 D.C.C. 1301 pursuant to the provisions of 22 D.C.C. 107.
4. The mere introduction of a fingerprint card which comes from the files of the Baltimore Police Department

is not prejudicial insofar as it establishes that appellant was previously arrested in Baltimore. The Baltimore Police Department, as does the police department of any large metropolis, fingerprints numerous persons in connection with purely non-criminal activities. Therefore, the fingerprint card itself is not indicative of a prior arrest.

Appellant introduced evidence which tended to show that he had a prior criminal record. Such evidence was before the jury before the Government introduced the fingerprint card from the Baltimore Police Department. Therefore, if it was error to introduce such a card, it was not prejudicial error because the jury had already been advised by appellant that he, [appellant] had a prior criminal record.

5. Appellant's contentions relating to the impropriety of the proceedings at trial are not substantiated by the record.

ARGUMENT

I

The Removal Proceeding Which Brought Appellant Before the District Court Did Not Affect the Court's Jurisdiction or Impair Its Judgment

The propriety of the removal proceeding which brought appellant before the District Court was irrelevant to his trial. It could not impair the jurisdiction of the District Court over appellant, nor could it affect that court's power to try appellant for crimes which he committed in the District of Columbia.¹ Accordingly, the judgment of the District Court remains unaffected. *Frisbie v. Collins*, 342 U.S. 519 (1952); *Kerr v. Illinois*, 119 U.S. 436; *United States v. Green*, 88 U.S.App.D.C. 249, 188 F.2d 48 (1951).

¹ Appellant contends that certain admissions made by him were improperly introduced into evidence in the hearing before the U.S. District Court in Denver, Colorado: Citing Rule 5 of Fed. R. Crim. P.; *Mallory v. United States*, 354 U.S. 449 (1952) and related cases. This alleged illegally obtained statement was never introduced in appellant's trial in the District Court for the District of Columbia, and therefore is irrelevant on appeal.

II

**Counts One and Three of the Indictment Were
Not Duplicitous**

Appellant challenged Counts One and Three of the indictment for duplicity. Appellant did not make an objection as to the indictment in the proceeding below. His failure to do so constitutes a waiver. Therefore, appellant cannot raise the issue of the duplicity of the indictment for the first time on appeal. Rule 12, Fed. R. Crim. P.; *Durland v. United States*, 161 U.S. 306 (1896); *United States v. Galgano*, 281 F.2d 908 (2nd Cir. 1960); *United States v. Private Brands, Inc.*, 250 F.2d 554 (2nd Cir. 1957), cert. denied, 355 U.S. 957; *Witt v. United States*, 196 F.2d 285 (9th Cir. 1951), cert. denied, 344 U.S. 827; *Beauchem v. United States*, 154 F.2d 413 (6th Cir. 1946), cert. denied, 329 U.S. 723, rehearing denied, 327 U.S. 826. In any event, even apart from this consideration, the evidence presented substantiates the propriety of multiple counts under 22 D.C.C. 1301.

Appellant checked into the Burlington Hotel on May 15, 1961. He and his wife intended to remain at the hotel until the 19th of the month, and so informed the management. (J.A. 53.) On May 19, 1961, appellant's bill was prepared and he gave the clerk-cashier of the hotel a check in payment of his bill which had accrued from the 15th through the 19th of May (J.A. 53). This check was drawn against a non-existent account (Tr. 80, 85).

After appellant had paid his bill on the 19th of May, he decided to remain in the hotel for a few more days (J.A. 53). On May 21, 1961, appellant terminated his stay at the Burlington Hotel, and paid his bill which had accrued from the 19th through the 21st of May. In lieu of a cash payment, appellant gave the hotel another check drawn against the same non-existent account (Tr. 80, 85).

The fact that appellants' two fraudulent Acts were perpetrated on the proprietors of the *same* hotel is immaterial as to whether or not there had been two separate viola-

tions of § 1301. For the statute does not require that the criminal act be committed against two separate inn-keepers. Though the victim be the same, each separate act of defrauding is a specific crime. The provisions of the statute itself provides that:

“Any person who obtains *any* lodging . . . with the intent to defraud the proprietor or management thereof . . . shall be deemed guilty of a misdemeanor . . .”
(emphasis added).

The contention that appellant's stay at the hotel was continuous from May 15th to May 21st, and therefore constituted a single fraudulent act is not supported by the facts. Appellant intended to leave the hotel on the 19th of May and paid his bill on that date. He later decided to remain and stayed on until the 21st. Had appellant not intended to leave the hotel on the 19th of May, there would have been no reason for him to tender payment of his accrued bill. The payment of his bill for lodging from the 15th through the 19th of May terminated the service obligation agreement entered into between appellant and the Burlington Hotel. There had supposedly been a fulfillment of the terms of this agreement and no further services in the form of lodging accommodations was to be extended by the hotel to appellant. When on the morning of the 20th, appellant decided to stay on at the hotel, he entered into a new lodging agreement with the proprietors of the Burlington, and thereby obtained a claim to additional service which were to be rendered by the hotel. Appellant's mere failure to physically leave the hotel and then re-enter does not vitiate the fact that one arranged period of lodging had been terminated and that a second lodging arrangement was entered into. Since appellant manifested at different times two separate intentions to defraud the proprietors of the Burlington Hotel and these two separate criminal intents culminated in separate overt acts, i.e., obtaining service in the form of lodgings on two separate occasions by the giving of two fraudulent checks, appellant was subject to prosecution for two separate violations of 22 D.C.C. 1301.

Furthermore, the validity of the indictment as to its multiple counts was not dependent upon appellant manifesting an intent to commit two separate criminal acts. On two separate occasions appellant obtained lodging in the Burlington Hotel by fraud. Under the provision of Section 1301 each of these fraudulent acts, though possibly the product of a single criminal intent, was chargeable as a separate violation of the statute.

III

The District Court Had Jurisdiction To Try Appellant For Violation of 22 D.C.C. 1301

Appellant contends that the express language of 22 D.C.C. 1301: "... upon conviction thereof in the Municipal Court [Court of General Sessions] for the District of Columbia . . ." denies the District Court jurisdiction over the crime set forth therein, and permits prosecution for this offense only in the Court of General Sessions.

The District Court is a court of general jurisdiction over all criminal cases and if an offense is cognizable in any court, it is cognizable in it. *Ex parte Wilkins*, 28 U.S. 193 (1830); *United States v. West*, 34 App. D.C. 12 (1909). As far back as 1877, the District Court for the District of Columbia (then known as the Supreme Court for the District of Columbia) was deemed to have cognition of all crimes and offenses committed in the District of Columbia. 19 Stat. 253, Ch. 69, § 2. [11 D.C.C. § 306.] In 1901, when Congress decided to codify the laws for the District of Columbia, it did so without altering or limiting the jurisdiction of the District of Court.² Since 1901, there have been several amendments to the "D. C. Code",

² 56th Cong. 2nd Sess. Ch. 854, 31 Stat. 1199 (1901). "Sec. 61—Jurisdiction—The said court shall possess the same powers, and exercise the same jurisdiction as the Circuit and district courts of the United States, and shall be deemed a court of the United States, and shall also have and exercise all the jurisdiction possessed and exercised by the Supreme Court of the District of Columbia at the date of passage of this code."

but not one of these amendments has been directed toward limiting the jurisdiction of the District Court in any manner. To the contrary, over the course of the years Congress has seen fit to expand the jurisdiction of this court, e.g., Act of June 25, 1948, 62 Stat. 922.

Title 22, D.C.C. 1301 was enacted as part of the 1901 codification of the laws of the District of Columbia. Legislative history relating to the enactment of this section shows that it was the intent of Congress to incorporate into the laws of the District of Columbia a criminal statute which was already part of the criminal code of many of the States (34 Cong. Rec. 3585). There are no legislative documents relating to the adoption of Section 1301 which indicates an intent on the part of Congress to limit the jurisdiction of the District Court.

Although in some cases the Court of General Sessions has concurrent jurisdiction with the District Court, the Court of General Sessions is indisputably an inferior court with limited jurisdiction, *Muller v. Confield*, 70 App. D.C. 168, 105 F.2d 47 (1939). The District Court cannot be deprived of its jurisdiction by mere implication, especially when the jurisdiction taken away from it by implication would have to vest in an inferior court of limited jurisdiction such as the Court of General Sessions. *United States v. West*, supra at p. 16. It is only by implication that the District Court can be denied jurisdiction over Section 1301, in favor of the Court of General Session.

The language in Section 1301 which appellant contends limits the jurisdiction of the District Court does no more than limit the sentence which the Court of General Sessions may impose for violation of this section of the code. The existence of a specific legislative pronouncement as to what punishment may be imposed by the Court of General Sessions for this offense, without enumeration of the District Court's sentencing power, does not prevent the District Court from entertaining a prosecution under this section. The District Court may impose sentence for a violation of this section under the provisions of 22 D.C. Code

107.³ (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 910). That Section expressly prescribes the punishment which may be imposed by the District Court upon the conviction of any criminal offense which is not specifically covered by the provisions of the code. *Davis v. United States*, 83 U.S. App. D.C. 49, 167 F.2d 288 (1948). Moreover, it is a settled principle of common law that the fact that the legislature has prohibited an act without annexing a punishment does not prevent a court of competent jurisdiction from imposing a penalty of a fine or imprisonment for the commission of the crime.⁴ *United States v. Marshall*, 6 Mackey 34 (D.C. Sup.Ct. 1887); *United States v. Coolidge*, 1 Gall. 488, 493 (1st Cir. 1813), citing Comm. Dig. Indict D.; 8 Co. 60, b; 2 Inst. 131; Bac. Abrid. Fine D. vol. I.

Thus, it is apparent the District Court was not impliedly or expressly divested of its concurrent jurisdiction (11 D.C.C. § 306 and 755(a)) by the sentencing provision of the last sentence of 22 D.C.C. § 1301. That court having concurrent jurisdiction with the Court of General Sessions "of all crimes and offenses" committed in the District of Columbia validly sentenced appellant to the four month term under each count pursuant to 22 D.C.C. § 107. Such sentence was well within the traditional limits of misdemeanor offenses as recognized and promulgated in 18 U.S.C. § 1.

IV

The Fingerprint Card From The Files Of The Baltimore Police Department Was Properly Introduced Into Evidence

Appellant argues that the testimony of the Detective William J. Carr, Bureau of Investigation, Baltimore Po-

³ The sentence imposed by the trial court was within the limits of 22 D.C.C. 107 and in accord with the nature of the offense. See 18 U.S.C. 1.

⁴ The Common Law is still in force in the District of Columbia. 49 D.C. Code 301, (Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1).

lice Department, and the introduction into evidence of a fingerprint card from the files of the Baltimore Police Department informed the jury of appellant's prior criminal record and it is therefore prejudicial error. This contention is based on the false assumption that the Baltimore Police Department only fingerprints individuals in connection with an arrest for a criminal offense. A metropolitan police department takes the fingerprints of many persons in connection with pursuit of activities which are in no way related to criminal violations.⁵ Therefore, the fact that the jury was informed that appellant had at one time been fingerprinted by the Baltimore Police Department does not in itself establish the fact that he had been previously arrested for some criminal act.

Furthermore, appellant's counsel, after several words of caution by the trial court, proceeded to use rogue's gallery pictures in an attempt to attack the credibility of one of the Government's witnesses (Herbert J. Moore) (Tr. 68 and 171). The rogue picture gallery was used by appellant before Detective Carr testified for the Government. Thus by his own action appellant informed the jury that he had previously been involved in criminal activities. Therefore, any further evidence which might infer that appellant had a prior criminal record was at best merely cumulative and in no way prejudicial.

⁵ The Metropolitan Police Department for the District of Columbia fingerprints persons in connection with obtaining certain licenses, see Police Reg. of Metropolitan Police Department (as amended August 25, 1955). (1) Auctioneers, art. 24 § 1; (2) Funeral car drivers, art. 27 § 6; (3) Hackers, art. 27 § 6; (4) Private Detectives, art. 34 § 1; (5) Second-hand Dealers, art. 1 § 5; (6) Solicitors, art. 34 § 1; (7) Vendors, art. 2 § 1; and (8) Sellers of Alcoholic Beverages. See Reg. of A.B.C. Rules and Regulations of Metro. Police Department (as amended August 25, 1955). These are just a few samples of the circumstances under which individuals may be fingerprinted in connection with the pursuit of clearly legitimate activities. The Baltimore Police Department undoubtedly carries out some, if not all, of the same functions as does the Metropolitan Police Department of the District of Columbia.

The record discloses an abundance of caution on the part of the trial court and the Assistant United States Attorney in avoiding any possibility that the jury might discover from the fingerprint card that appellant had a prior criminal record. (Tr. 7, 8 J.A. 68, Tr. 123, 124-5). The trial court ordered that a mask be prepared to fit over the front of the fingerprint card, leaving exposed only appellant's signature and fingerprints. Therefore, unlike the *Leigh* case, *Leigh v. United States*, (No. 17,066, decided September 27, 1962,) there was no possibility that even the most inquisitive juror could become aware of the contents of the unexposed parts of the document. Thus, being relevant to the issues of the trial, the fingerprint card was properly admitted into evidence. *Leigh v. United States, supra*; Cf. *Bynum v. United States*, 107 U.S. App. D. C. 109, 274 F.2d 767 (1960).

V

**Appellant's Remaining Allegations Relating To
Conduct of Trial Are Without Merit**

Appellant contends that the District Court erred in allowing a Government handwriting expert to base his comparisons on writings which were not introduced into evidence. This contention is without merit for the record clearly belies any such allegations.⁶

* MR. RUBENSTEIN: If Your Honor please, before the officer continues, might counsel approach the bench?

THE COURT: Very well.

(Whereupon counsel approached the bench and the following proceedings were held:)

MR. RUBENSTEIN: Were these exhibits not offered for samples of his handwriting as to his signature?

MISS LINDEMANN: Excuse me, sir?

MR. RUBENSTEIN: Were these—these requests from the District Jail were on the question of signature.

MISS LINDEMANN: I believe that the Exhibit 15, the finger-print card, was offered for only his signature and his fingerprints, and that the exhibit, the fingerprint card from the District Jail was offered only for the fingerprint and not for the signature;

Appellant further contends that the trial court improperly curbed his efforts to cross-examine one of the Government's witnesses (James Miller). This allegation is also not supported by the record. (J.A. 82-84). The trial court did not deny appellant an opportunity to pursue a particular line of questions on cross-examination. The court only prevented appellant from attacking the credibility of witness Miller by reading directly from the transcript of the testimony of a previous witness. In so ruling the trial court declared that the jury's recollection of the

and that Exhibits 11, 12 and 13 were offered and received as such. There was no limitation. They were offered as known handwriting.

THE COURT: As known handwriting, that is my recollection.

MISS LINDEMANN: As to the entire document.

THE COURT: Yes.

MISS LINDEMANN: Not just as to the signature.

THE COURT: Yes.

MR. RUBENSTEIN: I am very sorry. I didn't mean to interrupt.

THE COURT: You have a right to interrupt if you have any problem. Do you have a problem now?

MR. RUBENSTEIN: No, then I would have no problem if the exhibits were admitted for the entire face, all the handwriting on the face of it.

THE COURT: That is my recollection, that they were admitted as documents written by him.

MISS LINDEMANN: Yes, sir.

THE COURT: Those three papers which were prepared over in the jail and signed by him over in the jail were his handwriting throughout. That is my recollection.

MR. RUBENSTEIN: I am sorry, I thought it was just as to the signature.

MISS LINDEMANN: Would Your Honor indulge me a moment, please?

THE COURT: Yes.

MISS LINDEMANN: Yes, Your Honor. My understanding is the only limitation on any of the documents received was Exhibit 10, the card from the D. C. Jail, was accepted only for the prints and Exhibit 15 was offered only for the signature and the prints, and that the registration card from the Hotel Burlington, Exhibit 5, was offered and received only as to the face of the card and not as to the back of the card, and that there were no other limitations in the receipt of any other documents.

MR. RUBENSTEIN: I am sorry.

THE COURT: Does that solve your problem?

MR. RUBENSTEIN: Yes, sir, thank you, sir.

testimony of a witness was controlling and that it should be allowed to consider the testimony as a whole rather than some particular excerpt thereof. *Cf. Bates v. United States*, 95 U.S. App. D.C. 57, 219 F.2d 80 (1955), cert. denied, 349 U.S. 196; *Curley v. United States*, 81 U.S. App. D.C. 389, 160 F.2d 299 (1947), cert. denied, 331 U.S. 837, rehearing denied, 331 U.S. 869. Such a ruling in no way deprived appellant of a fair trial.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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